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GOVERNMENT OF KARNATAKA

KARNATAKA BACKWARD CLASSES COMMISSION

REPORT

(In Four Volumes)

Volume I, Part I

Main Report

L. G. Havanur

Chairman

1975

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REPORT

KARNATAKA BACKWARD CLASSES COMMISSION

REPORT

VOLUME I, PART I

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VOLUME I, PART I

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D. DEVARAJ URS

Chief Minister of Karnataka

GOVERNMENT OF KARNATAKA

KARNATAKA BACKWARD CLASSES COMMISSION

(Constituted under the Commissions of Inquiry Act, 1952)

To,
Sri D. Devaraj Urs,
Hon'ble Chief Minister of Karnataka.

Bangalore,
November 19, 1975.

RESPECTED SIR,

I have the honour to present to you, with a sense of extreme joy and satisfaction, the unanimous Report of the 'Karnataka Backward Classes Commission'.

After it was inaugurated by you in September 1972, it took us full three years to collect the necessary statistical data, the collection and compilation of such data had never been done before.

The conducting of socio-economic survey of 378 villages and town/city blocks in their entirety covering more than 3,55,000 individuals of about 171 castes and communities (a thing which has not been done before by any Commission/Committee) by more than 425 Investigators and Supervisors and the processing and compiling of the said statistical data and the socio-economic survey materials by 100 Tabulators was no small task having regard to the magnitude, complexity and yet the relevancy of the said materials. Hundreds of replies to the questionnaire, representations and memoranda were processed. Correspondence with thousands of authorities and institutions, collection and compilation of population statistics relating to about 200 castes, and educational and service particulars of nearly a million students and employees, summoning of nearly 400 witnesses and recording the evidence of 365 and consulting hundreds of authors, documents and judicial pronouncements in the preparation of the Report were, not only time-consuming but, all-consuming. When friends told me that it was a challenging job, I said it was dear to my heart. I welcomed the job, and my acceptance of it was to make my little contribution to solve the national, nay, a human problem. Although I prepared the entire Report without an iota of assistance from any Member, the basic approach adopted by me remained without being specifically incorporated in it, and so, I thought I should incorporate it here in this covering letter.

Schools of criticism and interpretation of the provisions of the Constitution relating to Scheduled Castes, Scheduled Tribes and Other Backward Classes have developed in India after 1950, and they are as numerous as there are castes, tribes and communities. All these years, identification of castes and communities as backward classes *on the principle of caste* was assailed by a storm of criticism by the advanced classes, and now their specification *by* caste and community names is being assailed by the same advanced classes. So sweeping has been the criticism and condemnation, which is like a running cricket commentary, that innocent and gullible backward classes who do not know the masquerading techniques of the advanced sections, have been made to believe that it is an offence to get themselves uplifted. And when I tried to draw the public attention to the social inequalities and economic and educational disparities, I was persistently criticised by the communalists occupying high and influencial positions.

Some people suggested for rejecting religion and caste for the determination of backward classes, but in their suggestion I found their confession to perpetuate injustice on the backward classes on the very grounds of religion and caste. I think it is less discriminatory, or no discrimination, in rejecting the vested rights of the so called meritted individuals of the advanced classes than rejecting the legitimate claims of the backward classes on grounds of religion and caste to have their due share in all walks of life.

In finding out solutions to the problems of backward classes, including Scheduled Castes and Scheduled Tribes, many have shown their scholarship and learning. And many more have relied upon their own experience and suffering. In the former category of persons we find divergent opinions, because of the ideological plane from which they speak. But, in the latter category we find unanimity. The real testimony to social disabilities and the extent and intensity of those disabilities under which the backward classes are suffering consists in the factual suffering of those castes, and the evidence of those who are impartial and objective in their approach to social justice. Testimony to social injustice does not belong to purely intellectual exercise or legal quibble. Real testimony should be separated from the purely rigorous logical exercises of the mind that lead to monstrous futility.

Caste has come to stay. One who knows the relevant aspects of our Constitution is bound to believe that, apart from Art. 17 which abolished practice of *untouchability,* no principle exists in it which abolishes or tends to abolish the institution of caste. There is no provision in the Constitution for abolishing the caste system, and if and when the system is abolished, the contents of our Constitution and other laws will be reduced to one-half of what they are to-day. The provisions of our Constitution respect the living institutions of our society, and of them, caste is one. The significance of those provisions can be understood not by taking the words and a dictionary. Those provisions could be understood by considering their origin. Our Constitution intends to protect the interests of the weaker sections, but not to maintain abstract theories that protect vested interests. Backwardness of certain castes and communities is due to our social structure in which rigid endogamous groups inherently sustain inequality due to traditional values and taboos. The system is such that in the stampede for advancement a communal group rushes on others. Lack of caste- or communal-consciousness in the backward classes has prevented them from organising themselves with a cohesive strength and gaining training for an effective confrontation with traditionalism and superstitions.

Solutions to social and economic problems must be found out by a realistic and rational approach, possessing first a comprehensive and an over-all picture of our society from all its angles and of all its aspects. A dry and cold-blooded judge, a communal administrator, an ambitious politician or an enthusiastic social scientist is bound to commit mischief of inestimable magnitude when he calculatedly ignores, suppresses, minimises or mis-interprets the significance of the realities of our social order, and the influence of our social institutions. Every one reveres his religion, and a Hindu, besides revering his religion, loves his caste. And so, everybody is bound to be parochial in practice, though outwardly in his speech he tries to project himself as a detached cosmopolitan.

From the reported judgments it seems that some of the judges who claim to believe in social justice to backward classes, appeared to be in an amusingly simple and unaffected state of mind in interpreting the Constitutional provisions artlessly, and expecting the backward classes to consume their pronouncements as divinely given nourishing substances. In deciding certain cases, a judge

depends upon intuition which is subtle, though in assigning reasons for his judgment he is seen articulating major general propositions.

Language of the Constitution, in so far as it relates to backward classes, is simple and unambiguous. But the language of the judiciary in interpreting the Constitutional provisions is highly ambiguous and complicated. In giving *meaning* to the expression 'backward classes', in suggesting the *criteria* for *social* and *educational* backwardness and in prescribing a maximum *extent* of reservation, judiciary did not assign reasons based on sufficient relevant material. Judiciary has raised problems, suggestion of solutions to which has become rather difficult. As a result of the confusion created by the President-appointed Backward Classes Commission and indefiniteness of the judiciary, the belief that the Government and the judiciary can solve the socio-economic problems of backward classes is proved to be only an illusion. It is, indeed, a nuisance to any one to read the Reports, monographs and judicial judgments on backward classes when one comes across hundreds of expressions, like backward and poor people, neglected groups, oppressed persons, backward areas, rural people, working people etc., being used in place of the statutory expression 'backward classes'. The art of neology is best (? worst) exhibited in the coinage of innumerable neologism, in a short period of about two and half decades after the adoption of our Constitution in 1950, for a single simple expression of 'backward classes'. Indian social scientists of repute, political leaders, journalists and jurists of eminence have, some-times consciously and sometimes unconsciously, made the expression 'backward classes' stipulatory in meaning to wallow in semantic confusion. Judges, by suggesting certain criteria which in the nature of things are impossible of ascertainment, have rendered Arts. 15(4) and 16(4) sufficiently nugatory. Judgments on backward classes have become only an interesting pedagogical material sufficiently voluminous for law students for writing dissertations on abstract and impracticable aspects for their doctorate degrees in law. They have turned Arts. 15(4) and 16(4) odourless by infusing strong confusion in them, while at the same time instilling hope in the backward classes to find flavour in their judgments. Indeed many of the judicial pronouncements on backward classes are not great by reason of their intrinsic importance, but they are called great because of the over-whelming interest shown by those whose vested rights

are either protected or affected. Such pronouncements have made the Constitutional provisions ambiguous which are clear. There is nothing that one should more deprecate than the judiciary imposing restriction as to the extent of reservation below 50 per cent. By so restricting the extent of reservation, judiciary has gone beyond the language of Arts. 15(4) and 16(4) thus preventing the State from making adequate reservation that a large population constituting the 'backward classes' deservedly desires.

Whatever may be the opinions of *eminent* persons on equal treatment clauses of our Constitution, there can be no doubt that their scope embraces the fundamental principle of discriminatory and protective treatment in favour of backward classes on the ground of their caste. The meaning of *equal treatment* and *non-discrimination* depends upon the circumstances, and their meaning varies with the subject matter and the social necessities.

The concept of equality under our Constitution is not absolute in terms, but it is circumscribed by limitations. The reason is, in an unequal society such as ours, the principle of equality is violated if it is applied in its absolute sense. The rule of equality could be applied to those castes which are similarly circumstanced. Equality means equal treatment of equal castes. Classification for legal purposes on the ground of caste differences is the essence of equality. The principle of equality consists in providing equality of opportunity to castes which are equal, and our Constitution does not conceive of absolute equality. It consists in the equal treatment of equal castes in equal circumstances. Constitution does not direct the State to make laws which should have universal application to castes which are not, in the nature of things, in the same position. Different or special treatment to different castes is the rule of equality embodied in our Constitution. Differential treatment of backward classes alone can give equality of opportunity to all. Equality of opportunity in absolute terms for unequal castes means aggravation of inequality. Differential treatment of backward classes, particularly in education and in services, is prescribed, because the Constitution-makers found that the backward classes are social groups which are classified, and their classification recognised, by our society.

Equality, or the concept of equality, is that when castes are dissimilarly placed, they cannot be made equal by treating them

equally. One of the aims of equality is to achieve caste-equality in fact. Inequality in castes has generated an attitude of protest in the lower castes against an unjust treatment meted out to them, and an urge for equality. Privileges in any form are symbols of inequality. And privileges to some castes only are indicators of unjust society. Removal of privileges or their proportionate distribution amongst all castes is justice which equality aims to secure. Distributive justice satisfies the rule of equality. Backwardness of castes is a stigma in our national life and the object of equality, conceived of in our Constitution, is to erase the said stigma. A perfectly abstract principle of equality is a thing of impossibility in its application. Equality has a two-fold object. One is, it aims at removing the existing caste-inequalities. The second, an off-shoot of the first, is, it aims at creating abilities in all castes. The achievement of the said objectives implies differential treatment of castes by the State. In doing so, the State is to take into consideration the private inequalities of caste-status and economic and educational disparities. Achievement in the success of equality is measured by equal results recorded by all castes. Lower castes cannot produce equal results without compensatory measures protecting them from discrimination. Protesting against protective discrimination amounts to an ideal of maintaining inequality. Justification for reservations in technical and higher educational institutions and public services for backward classes is not that they offer education and employment to some individuals of those classes, but their justification lies in the gratification of the neglected and the oppressed classes in getting their due share in the administration of the State. It should be noted that when the Constitution was made, the enlightened conscience of the nation wanted the backward classes to be uplifted, more than the backward classes demanding upliftment.

We should respect the national conscience embodied in the Constitution.

Even the casual observant, or the least observant, could hardly fail to see the abnormal backwardness of certain castes and communities if his eyes could just glance at the various *Tables* relating to their socio-economic conditions and *Statements* and *Annexures* relating to their education and employment. Unless the advanced classes look at themselves in their setting with backward classes, there is little hope of their forming a just estimate of the progress they have made.

I hope, the advanced classes will involve themselves in the cause of the upliftment of the backward classes and will induce the Government to take up compensatory measures that have remained undone for them all these years.

The contents of our Report have been the outcome of research as a result of dissatisfaction in the existing literature on backward classes. Judicial literature seems to me to be deficient in many important respects. I had to disinter from an abundant heap of irrelevant and relevant judicial literature, Constitutional documents, debates in the Constituent Assembly, proceedings of Parliament, treatises on castes and tribes, Census Reports, gazetteers, monographs etc., some solitary fragments of gold in the form of which the wisdom of the judges, eminent social scientists and research scholars was exhibited.

The question, being of great social and national importance, has to be decided only by the Supreme Court for removing the inconsistencies and obscurities and for achieving uniformity of determination so that potential disputes may be silenced, and ameliorative measures denied to the backward classes all these years may be implemented by the Government unimpaired hereafter.

In my opinion, the conventional idea of high and low will end soon if the directive principles of State Policy are made equal in importance to fundamental rights. Traditional Hindu mind has ascribed status of superiority and inferiority to social groups, occupations and languages by hierarchically grading them and so, the judicially-ascribed superiority to fundamental rights and inferiority to the directives, for obvious reasons, is in consonance with the Hindu concept of graded inequality. For instance, fundamental rights to acquire and hold property which are superior are exercised by the all-powerful superior propertied classes and the rights to only a living wage, which are not exercisable on the ground of their inferior character, belong to the propertyless lowly classes. There will be no claim for protective discrimination and compensatory treatment by any class of citizens, and perhaps ours will be the last Commission on backward classes, if Art. 37 is amended, as was suggested by B. N. Rao, the Constitutional Advisor to the Constituent Assembly, making the directives also enforceable through Courts.

By such amendment, Parliament is not curtailing or abrogating the *sacrosanct, transcendental* and *inviolable* fundamental rights ; it is

not altering the *basic structure* or *fundamental features* of the Constitution ; and it is not curtailing or abrogating the *judicial power of review*. Indeed, power of judicial review will be widened, because the large mass of poor people will also invoke judicial intervention. The concept of *castelessness* will permeate both the fundamental rights and the directives and the present conflict about supremacy between the Parliament and the judiciary may end. For introducing constitutional amendment to the 'inferior' directives no new constituent body need be constituted. It would, however, be premature on our part now to say if the legislative machinery and mind at the Centre is interested in continuing the inferior character of the unenforceable directives.

Sir, inspite of the deliberate opposition and criticism by some who did not want me to function as Chairman and who tried to divert my attention, what little work has been done by me is not from any inherent power that resides in me, but from the cheers, goodwill and the blessings of my friends and elders, including some of my colleagues on the Commission, that followed my path.

Sir, I am, indeed, grateful to you and your Government for setting me on this journey, though arduous and hard, of my life's purpose. I took up the cause of the backward classes about 20 years back soon after the publication of the President-appointed Commission Report. I made that cause my life—thought of it and dreamt of it. I let my brain, nerves and every part of my body to be full of that idea, and just left every other idea alone. When at a time the backward classes in the State had left all hopes of better future for them, you became the Chief Minister and appointed our Commission.

I feel my life's journey will have been well undertaken when you and your Government are pleased to implement our Commission recommendations.

Thanking you,

With kind regards,

Yours sincerely,
L. G. Havanur,
Chairman.

CHAPTER I

MOVEMENT FOR EQUALITY IN KARNATAKA

1. No systematic and comprehensive study seems to have been made of the social, political and cultural aspirations of the people of Karnataka as a whole. As in the British Provinces of Bombay and Madras, in the Princely State of Mysore also we notice instances of social conflict and non-Brahmin mobilisation. Studies made by Marc Galanter,[1] Eugene F. Irschick,[2] E. Sa. Vishwanathan,[3] Lelah Dushkin,[4] Bjorn Hettne,[5] K. K. Kalvekar[6] and V. K. Natraj[7] show, in brief, the conflict in cultural, social and educational fields in South India, including Karnataka. Ideas of social and economic equality, individual freedoms and human dignity were not known to Indians until the British Rule was established.

2. Spread of English education among the upper strata through schools and colleges, recruitment of Indians in the civil and defence services, though initially in the lower cadres both at the provincial and central levels, spread of railways, post and telegraph services all over the country, circulation of newspapers, journals and periodicals in English and regional languages as a result of establishment of printing press, provided an occasion and environment for the educated Indians of the upper strata to meet, communicate and discuss with one another matters connected with national, social and cultural aspects, and disseminate Western ideas of equality and freedom.

3. First, in point of time, Bengal province came under the influence of Western ideas, and the social and cultural composition of its society provided an opportunity of English education to the Bhadralok community which consists of the priestly and *zamindari* castes of Brahmins, Baidyas and Kayastas.

4. There is a cohesion of culture and common economic interests among the said three castes. Language, history and origin of the people are also almost common.

5. Bombay and Madras Provinces also came under the Western influence. But the political, cultural and social aspirations of the people of those provinces differed from those of Bengal Province. Bombay Province was composed of population different in language, culture and religion. Land tenure was different. Madras province was typical in all respects—difference in language and culture were pronounced. Colour differentiation gave rise to the theory of Brahmins being of foreign origin, and racially Dravidians the original inhabitants of South India.

6. Brahmins, with their tradition of learning, were the first to take to English education and Government services offered by the British. Non-Brahmins, including the Untouchables, did not get education and therefore did not get entry into the prestigeous Government services and professions of learning like law, medicine, engineering, etc.

7. After the down-fall of the Maratha Empire, Brahmin dominance emerged, and they came in direct contact with the British. Indeed, Brahmins came to govern the Maratha country founded by Shivaji. In the entire area covered by the Maratha Empire, Brahmins spread themselves and the British depended upon the support of the Brahmins, who had influence on the society. "Brahmins were mainly responsible for the British East India Company to come to prominence and this further resulted in dividing the whole of South India into two main Presidencies—the Bombay and the Madras Presidencies, which were formerly under one empire, *i.e.*, Maratha Empire. The Bombay and Madras Presidencies under the British rule were very much influenced by each other in respect of political history, as they had come under the same Brahminical influence".[8]

8. Mysore State with a geographical contiguity could not remain isolated. "In Southern India, Brahminism has remained more fiercely militant than in any other part of India, chiefly perhaps nowhere had it wielded such absolute power within times which may still be called recent".[9]

9. The British rule helped Brahmins to take to Western education and to enter the new professions. Britishers patronised the Brahmins who took quickly to Western education and system. "The Brahmins regarded themselves as the governing class, enjoying all advantages, and harassed the poor and toiling masses. They were all in all—landlords, agriculturists, white collars and, above all, professional caste-lords. They seized everything from the peasants, in one or the other way, their reign was a reign of terror and despotism and they never tolerated any reform in the existing caste system".[10]

10. "British rule in India helped Brahminism to become more dominant in economic, political and social life of India again. Suffering with hunger and suppression, the lower classes of society in the South were economically handicapped. It was virtually slavery that existed and this was continued since thousands of years. In the same religion the upper caste had divided the society to such an extent that it resulted in slavery. The divisions and separations, which took place because of Brahminisation, had affected social conditions to such an extent that if one caste or Jathi was being tortured, or being subjected to severe discriminations, the other castes

did not unite over the issue, but instead, enjoyed seeing the suppressions and tortures. Under such conditions, the upper castes have always made themselves the masters of all situations ".[11]

11. " The Brahmins had always shown a clear apathy for mass education ".[12] Western education and liberal ideas reached the masses through Christian missionaries. Kalvekar states " No wonder, the non-Brahmin movement was the natural outcome of all these sufferings ".[12]

12. So far as the old Mysore State was concerned, " the rule of the Diwans can be looked upon as the most conspicuous component of the Brahmin power monopoly. This power monopoly was challenged by the non-Brahmin movement."[13] " The rise of the Brahmins to political dominance coincided with the firm establishment of British colonial rule by the mid-19th century. The Brahmins were extremely well prepared for taking advantage of the new opportunities ".[14]

13. The Brahmin versus non-Brahmin movement in Old Mysore was only a reflection of the developments that were taking place in Madras. Lingayatism or Veerashaivism which revolted against Brahminism in the 12th century with a cultural content provided a foundation in Karnataka for the spread of non-Brahmin or the anti-Brahmin movement. Lingayats, through the influence of their Mutts (Monasteries) and the Swamijis (religious heads) provided secular leadership for the non-Brahmin movement. The movement assumed a shape of demand for adequate representations in services, because it was noticed that in 1918 Brahmins had preponderance in the public services. To a deputation consisting of the leaders of the non-Brahmins which met His Highness the Maharaja in 1918 an assurance was given that a Committee on Backward Classes would be appointed to consider the problem, and in fact such a Committee was appointed under the Chairmanship of Sir Leslie Miller, Chief Justice of Mysore. When in 1921 His Highness the Maharaja implemented the recommendations of Miller Committee, the Brahmin reaction was, as is clear from K. T. Seshaiya's speech in the Representative Assembly, " I do not ask for a living for the Brahmins. That is quite a different question. My only point is we must have efficiency in the public services. Public service is not a representative institution to which recruitment should be made on a communal basis. According to *Sukra Niti* and according to the practice prevailing in all Western countries, whoever is qualified will be entitled to serve under Government. Whether a candidate for office is a Jew, Christian, Protestant or Jacobite, his qualification alone counts. In no country and at no time in the annals of the world, was Government service held to be a representative institution to be recruited on a communal basis ".[15]

14. It is to be remembered that M. Visvesvaraya had to relinquish his Diwanship on this issue. R. Gopalaswami Iyer opposed the reservation of posts to backward classes on the ground that " those who have studied Political Economy are aware of the law of supply and demand. There was the demand and we furnished the supply. The children of Shanbhogs (village accountants) went to places where there were schools and got educated. No one prevented students of other communities from doing likewise ".[16]

15. H. Krishna Sastry said " If all classes of people take up the same avocation, the country will not prosper. Professions must be distributed among them. And in all countries, people consist of three or four classes. The first class takes the Government service and the learned professions ; the second class are engaged in trade and industry, and in the lower grade of the service, the third, in agriculture, and the last class will be unskilled workmen engaged in factories but some times also depending upon others for livelihood.... There is nothing very pleasant or enviable in Government service ".[17]

16. The arguments of the non-Brahmins in justification of reservation for backward classes were to be found in Linge Gowda stating " The forward communities must not forget that they were also merged in ignorance once. And when some of them entered service the others thought that by getting educated they would also find employment. Similarly, now we have hopes that just as the Brahmins have, by virtue of their education, got appointments, so also we can ; and this hope should not be taken away from us ".[18]

17. Diwan Kantharaj Urs to allay the fears of the Brahmins said that " since these (non-Brahmin) communities are so backward in respect of higher education that a sufficient number of candidates are not likely to be available from among them for some time to come ".[19]

18. " The non-Brahmin movement was kept together as long as the Brahmin monopoly on higher appointments was intact but gradually it began to dis-integrate ".[20] While the Muslims, Christians and Lingayats were fairly successful, Vokkaligas, a most numerous community, had reasons to complain.[21]

19. In Mysore, recruitment to services had become a socio-political issue involving large sections of the population in controversy. Lingayats, Vokkaligas, Muslims and other communities welcomed the recommendations of the Miller Committee. D. S. Mallappa, H. B. Gundappa, H. C. Dasappa, K. C. Reddy, Murugesan Pillai (Depressed Classes) and Abdur Rahman were among those who spoke in favour of reservation.

However, Muslims wanted to be treated separately. In the pre-Miller Committee days Muslims were getting their due share

separately, and so they contended that " we do not wish to be included in other communities." The reason for such a contention was that, according to them " after the Miller Committee the Muslims suffered ".

20. The kind of cultural upheaval which occurred in Madras did not occur in Mysore. Lelah Dushkin states that " Mysore already had its own version of this in the form of the Veerashaiva or Lingayat movement beginning in the twelfth century ".[22] In the Bombay Province " the movement had both the cultural dimension and the small landlord elite party engaging in jobbery for itself " but in different forms and a different time sequence. " There was also an element of economic radicalism inspired partly by the racial thought, anti-Brahmanism and anti-caste, of Mahatma Jotirao Phule and partly by deteriorated economic conditions "[23]

21. " On the other hand, in the State(s) of Hyderabad, with its sizable component of Muslim officials....there was no non-Brahmin movement(s) "[24]

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CHAPTER II

KALELKAR COMMISSION REPORT AND BACKWARD CLASS MOBILIZATION.

1. When in the beginning of 1956 the Kalelkar Commission Report was published, particularly the suggestions its Chairman had made in his covering letter to the effect all women as a class, all villagers as a class etc., should be treated as backward classes, L. G. Havanur,[1] anticipating the magnitude of the damage that would be done to the backward classes, convened a Conference on 22nd May 1956 at Ranebennur, of the Backward Classes, Scheduled Castes and Scheduled Tribes, first of its kind, inviting leaders of the proposed areas of the five States of Mysore, Bombay, Hyderabad, Madras and Coorg which would be integrated to form the new State of Karnataka. A. Bheemappa Naik [2], Sarojini Mahishi [3], B. Basavalingappa,[4] Gudleppa Hallikeri[5] and F. D. Ghodke[5a] spoke against the recommendations of Chairman Kalelkar.

2. The memorandum of the Central Government on the Report of the Kalelkar Commission suggested, however, to continue the existing State lists and to conduct sample socio-economic survey to supply the deficiencies found in the Commission Report.

3. The new State came into existence on 1st November 1956 integrating the said five Kannada speaking areas. As stated elsewhere, in 1958, attempt of the Governnment in making a uniform list of backward classes was disapproved of by the Mysore High Court. A similar attempt made in 1959 was struck down by the High Court. In January 1960, the Mysore Government appointed the Backward Classes Committee under the Chairmanship of Nagana Gowda.[6] The Government Order, 1961,based on the recommendations of the Nagana Gowda Committee was struck down by the Supreme Court in Balaji case,[7] with an observation that the State Government had committed fraud on the power vested in it by Art. 15(4). Purporting to go by the decision in Balaji case, the Government issued in July 1963 an Order, as a temporary measure, classifying individuals as backward, and in about a week's time of its issue, the validity of the said order was challenged by L. G. Havanur in the Mysore High Court in Vishwanatha case.[8] The High Court observed that *caste* was a relevant, nay, an important factor in the determination of backward classes and that classifying individuals as backward was a very imperfect classification which had harmed the Hindu backward castes that the State Government should *soon* make a proper classification lest its

bona fides should be questioned. The judgment was pronounced on 30th September 1963.

4. Chief Minister S. Nijalingappa [8a] declared from Mangalore on 31st October 1963 that caste and community factors shall not be taken into consideration. The High Court direction was not respected.

5. When the Supreme Court was hearing the Chitralekha[9] case, L. G. Havanur filed an intervention application for Court's permission to show the constitutional invalidity of the July 1963 Order. Permission was not granted.

6. And so, he wrote a monograph on backward classes in 1964 showing how the Mysore Government, Mysore High Court in Vishwanatha case and the Supreme Court in Chitralekha case had misinterpreted the judgment in Balaji case.

7. The Judgment in Balaji case was given by Gajendragadkar J. on behalf of the bench, and by the time Havanur wrote the book in 1964, Gajendragadkar J. had become the Chief Justice of India. A cyclostyled script of his book was sent to Chief Justice Gajendragadkar on 3rd November 1964 for favour of his 'Foreword'. Because, Havanur thought that, it was Gajendragadkar J. who could have prevented his judgment in Balaji case being further misinterpreted by the judiciary. Havanur was intimated on 10th November 1964 that Gajendragadkar, Chief Justice, was not writing forewords to books.

8. In the meantime, inspired by the judgment of the Supreme Court in Balaji case, Writ Petitions were filed in the High Court of Andhra Pradesh challenging the validity of the list of backward classes. Havanur came to know that G. Lacchanna[10] had taken up the cause of backward classes in Andhra Pradesh State, and so, copies of Havanur's monograph were sent to Lacchanna in April 1965, and also to his counsel P. A. Choudhary.[11]

9. G. Lacchanna intervened in the case before the Supreme Court, and the Supreme Court[12] for the first time after its judgment in Balaji case came to say that *caste cannot be excluded in determining the backward classes.*

10. Havanur had sent copies of his book to the Commissions on Backward Classes constituted by Kerala and Andhra Pradesh Governments, and also to some judges of the Supreme Court.

11. After his retirement as Chief Justice of India, Gajendragadkar became the Vice-Chancellor of the University of Bombay. Havanur wrote to him in November 1967 for favour of his opinion

on his book on backward classes by his letter dated 28th November 1967. Gajendragadkar expressed his inability stating: *I trust, you understand my difficulties.*

12. Inspite of the fact that the Central Government had issued direction to the State Government to conduct sample socio-economic survey to supply the deficiencies in the Kalelkar Commission Report and inspite of the stand it took in Vishwanatha case before the Mysore High Court and in Chitralekha case before the Supreme Court that the July 1963 Order was only a temporary measure, pending elaborate study and collection of data, the State Government did not appoint any Commission, nor did it collect any data.

13. In 1969, split in the Congress Party occurred. The newly elected President of India, V. V. Giri, visited Bangalore on 13th September 1970 after de-recognising the Princes and doing away with their Privileges. N. Rachaiah,[13] L. G. Havanur, K. H. Ranganath,[14] M. H. Jayaprakash Narayan,[15] K. P. Sachendranath,[16] Kalle Sivothama Rao,[17] A. B. Mariappa,[18] S. Hanumanthaiah[19], and S. Siddappa[20] presented a joint memorandum requesting the President to derecognise caste, or to implement the Kalelkar Commission recommendations or direct the State Government to appoint a Commission on backward classes. The Memorandum stated that if the State Government failed to appoint a Commission "*a situation may arise when you may be called upon to impose your Rule in the State.*"

14. Again, on 8th November 1970, L. G. Havanur convened a Conference of Scheduled Castes, Scheduled Tribes and other Backward Classes under the Presidentship of N. Rachaiah, which was inaugurated by M. Govinda Reddy.[21] Participants at the said Conference were, M. Mallikarjunaswamy,[22] B. Basavalingappa, K.H. Ranganath, M.H. Jayaprakash Narayan, B.T. Parthasarathy,[23] A. B. Mariappa, T. V. Venkataswamy,[24] Kalle Sivothama Rao, N. N. Kallannavar[25] and others, many of whom are leaders of Scheduled Castes.

15. It is interesting to note the reaction of Chief Minister Veerendra Patil[25a] who said at Annigeri on 10th November 1970, two days after the Conference, that reservations to Scheduled Castes and Scheduled Tribes in the IAS and the IPS cadres should be done away with.

16. After the mid-term poll to Parliament in March 1971, Veerendra Patil Ministry resigned, and *President's Rule was imposed.*

17. At a Conference of Denotified Tribes held at Hubli on 16th May 1971, which was inaugurated by D. Devaraj Urs[26],

L. G. Havanur, P. G. Muthappa[27], L. R. Naik[28], B. Basavalingappa and K. R. S. Nayudu[29], pleaded for appointment of a Commission.

18. When the present ministry was formed in March 1972, a resolution was passed on 1st April 1972 at the Backward Classes Cell of the Karnataka Pradesh Congress Committee (Ruling) at the instance of L. G. Havanur and Acharya K. Ramalingam for appointing a Commission. K. R. S. Nayudu presided over the meeting.

19. On the next day, L. G. Havanur, K. R. S. Nayudu and L. R. Naik led the delegation to the Chief Minister D. Devaraj Urs, and on 21st April 1972, L. G. Havanur and V. C. Thimmarayappa[30] presented a memorandum to D. K. Naikar.[31]

20. In the meantime, appeals were made to Government, some in the form of 'letters' to the local newspapers, particularly in the *Deccan Herald* daily, by R. Rangaiah,[32] H. G. Balakrishna,[33] L. G. Havanur, P. Kodanda Rao,[34] S. K. Venkataranga Iyengar,[35] Krishna Reddy,[36] V. H. Ron,[37] C. S. Kothavale,[38] and A. M. Dharmalingam,[39] stating that the appointment of a Commission was a must to secure justice to the Backward Classes.

21. L.G. Havanur described in Deccan Herald the inestimable harm that had been done to the backward classes under the July-1963 Order. Havanur's opinion that the judgment in Balaji case was mis-interpreted was supported by S. K. Venkataranga Iyengar,[35] counsel who had appeared for Balaji and Chitralekha in the Supreme Court.

22. It seems, Advocate-General R. N. Byra Reddy[40] expressed his opinion that a need had arisen for appointment of a Commission. Government appointed a Cabinet Sub-Committee consisting of Ministers M. Mallikarjunaswamy, B. Basavalingappa and D. K. Naikar to examine the question of appointment of a Commission. All the three Cabinet Ministers unanimously stressed the necessity for a Commission.

23. Resolution had also been moved in the Legislative Council by N. Rachaiah and Y. Ramachandra to that effect.

24. In July 1972, Chief Minister D. Devaraj Urs made an announcement in the Assembly of his decision to appoint a Commission.

25. Opposition leaders H. D. Deve Gowda,[41] Kagodu Thimmappa,[42] S. Bangarappa,[43] Konandur Lingappa[44] and other legislators welcomed the decision.

26. And on 18th July 1972, Chief Minister D. Devaraj Urs announced in the Legislative Assembly the appointment and composition of the Commission.

27. In September 1973, M. D. Nanjundaswamy[45] and A. M. Dharmalingam convened a Jurists' Seminar in which K. Subba Rao,[46] K. S. Hegde,[47] R. N. Byra Reddy, M. Bashir Hussain,[48] B. T. Parthasarathy,[49] T. K. Tukol,[50] Mir Iqbal Hussain,[51] Gopivallabha Iyengar,[52] Kadidala Manjappa,[53] G. R. Ethirajulu Naidu,[54] N. Rachaiah, L. G. Havanur, H. G. Balakrishna and many others participated. Everyone of the participants decried the July-1963 Scheme.

28. In October 1973, a South-Zone Conference of Backward Classes, Scheduled Castes, Scheduled Tribes and Minorities convened by D. Kemparaj Urs,[55] was inaugurated by Prime Minister Indira Gandhi and presided over by Chief Minister D. Devaraj Urs.

29. This brief account shows the involvement of politicians, lawyers and judges of all castes and communities, and of all political parties in the cause of the backward classes, and the abiding interest Chief Minister D. Devaraj Urs has for the cause of the weaker sections. But for Devaraj Urs the present Commission would not have been a reality.

References—

1. L. G. Havanur was practising as a lawyer at Ranebennur until he shifted to Bangalore in 1962. He is now the Chairman of the Commission.

2. A. Bheemappa Naik was a Member of the Old Mysore Legislative Assembly. Later a Minister in the Nijalingappa Ministry.

3. Dr. (Miss) Sarojini Mahishi, now the State Minister in the Union Government, was an Advocate practising at Dharwar.

4. B. Basavalingappa, a practising Advocate, Bangalore, was the Deputy Minister during 1958-1962 and later a Cabinet Minister in the Devaraj Urs Ministry.

5. Gudleppa Hallikeri, M.L.A., later, Chairman, Mysore Legislative Council.

5*a*. F. D. Ghodke, M.L.C., Bombay Legislative Council, later became a member of the Mysore Backward Classes Committee in 1960.

6. Dr. R. Nagana Gowda, a Minister in the Old Mysore Government, later became the Chairman of the Mysore Backward Classes Committee appointed in 1960.

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10. G. Lacchanna, Member of the Andhra Pradesh Legislative Assembly, President of the Backward Classes Federation.

11. P. A. Choudhary, Advocate who appeared on behalf of G. Lacchanna.

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13. N. Rachaiah, former M.P., former Minister for Social Welfare, M.L.C. presently a Cabinet Minister in the Devaraj Urs Ministry.

14. K. H. Ranganath, former M.L.A., (P.S.P.). Advocate, President of the KPCC, presently a Cabinet Minister in the Devaraj Urs Ministry..

15. M. H. Jayaprakash Narayan, M.L.A.

16. K. P. Sachindranath, Vice-President, INTUC, Mysore Unit.

17. Kalle Sivothama Rao, Journalist, Bangalore.

18. A. B. Mariappa, Advocate, President, Kurubara Sangha, Bangalore, presently Member of the Karnataka Public Service Commission.

19. S. Hanumanthaiah, Advocate, General Secretary, Valmiki Nayaka Sangha, Bangalore.

20. S. Siddappa, Advocate, General Secretary, Yadava Sangha, Bangalore.

21. M. Govinda Reddy, M.P., Chairman, B.E.L., Bangalore, *Vide* local dailies of 9th November 1970.

22. M. Mallikarjunaswamy, Minister in Devaraj Urs Ministry.

23. B. T. Parthasarathy, Advocate, President of the Bangalore Bar Association, and presently Principal, Visveswarapuram College of Law.

24. T. V. Venkataswamy, General Secretary, Arya Idiga Sangha, presently M.L.C.

25. N. N. Kallannavar, M.L.C.

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26 D. Devaraj Urs, First President of KPCC (R), now Chief Minister of Karnataka.

27. P. G. Muthappa, Social Worker, President of the Denotified Tribes Conference.

28. L. R. Naik, Advocate, and now Convenor, Backward Classes Cell, KPCC (R), Retired State Government Officer.

29. K. R. S. Nayudu, Convenor, Backward Classes Cell, KPCC (R) M.L.A., now Member of the Commission.

30. V. C. Thimmarayappa, General Secretary, Backward Classes Cell, KPCC (R).

31. D. K. Naikar, Cabinet Minister in the Devaraj Urs Ministry.

32. R. Rangaiah, Principal, Sri Renukacharya College of Law, Bangalore, now Chairman, Language Commission; *Deccan Herald*, May 19, 1972; and July 1, 1972.

33. H. G. Balakrishna, Advocate, now Professor, Government Law College, Bangalore.

34. P. Kodanda Rao, (Late), Servants of India Society, *Deccan Herald*, June 28, 1972.

35. S. K. Venkataranga Iyengar, Senior Advocate of the Supreme Court who appeared on behalf of the Petitioners before the Supreme Court in Balaji and Chitralekha cases. *Deccan Herald*, July, 8, 1972.

36. Krishna Reddy, Advocate, Bangalore.

37. V. H. Ron, Advocate, Bangalore.

38. C. S. Kothavale, Advocate, Bangalore.

39. Prof. A. M. Dharmalingam, Advocate, Professor of Law, Sri Renukacharya College of Law, Bangalore.

40. R. N. Byra Reddy, Advocate-General for Karnataka, Bangalore.

41. H. D. Deve Gowda, M.L.A., Leader of the Opposition in the Legislative Assembly.

42. Kagodu Thimmappa, M.L.A., (Socialist Party), Advocate.

43. S. Bangarappa, Advocate, M.L.A., (Independent).

44. Konandur Lingappa, M.L.A., (Socialist Party).

45. M. D. Nanjundaswamy, Advocate, Professor, B.M.S. College of Law, Bangalore.

46. K. Subba Rao, former Chief Justice of India.

47. K. S. Hegde, former Judge, Supreme Court of India.

48. M. Bashir Hussain, Principal, Government Law College, Bangalore.

49. B. T. Parthasarathy, Advocate, President of the Bangalore Bar Association, now Principal, Visveswarapuram College of Law.

50. T. K. Tukol, retired Judge, High Court of Mysore and former Vice-Chancellor of Bangalore University.

51. Mir Iqbal Hussain, retired Judge, High Court of Mysore and former State Vigilance Commissioner.

52. Gopivallabha Iyengar, retired Judge, High Court of Mysore and former Chairman, Language Commission.

53. Kadidala Manjappa, Advocate, and former Chief Minister of Mysore.

54. G. R. Ethirajulu Naidu, former Advocate-General.

55. D. Kemparaj Urs, President, Karnataka Federation of Backward Classes, Scheduled Castes, Scheduled Tribes and Minorities (L. G. Havanur was the Chairman of the Reception Committee of the said South-Zone Conference).

CHAPTER III

SCOPE OF INQUIRY

1. The Government of Mysore, now Karnataka, appointed our Commission by their Government Order No. SWD 81 SET 71, dated 8th August, 1972. The terms of reference are as under :

(1) To suggest the criteria to be adopted for determining whether any classes of persons in the State other than the Scheduled Castes and the Scheduled Tribes may be treated as socially and educationally backward classes ;

(2) To investigate into the living and working conditions of all such classes of persons with special reference to the difficulties under which they may be labouring and to make recommendation as to the special provisions which are necessary to be made by the Government for their advancement and for the promotion of their social, educational and economic interests generally ;

(3) To make a list of all classes which may be regarded as backward classes in the State ;

(4) To suggest what reservations should be made for such classes in the educational institutions maintained by the State or receiving aid out of the State funds ;

(5) To suggest what other concessions like scholarships, etc., may be given to such classes by way of assistance ;

(6) To determine to what extent such classes are represented in the services under the State and to recommend what reservations of posts in such services may be made for them ;

(7) To generally advise the Government about the steps to be taken to ensure adequate safeguards for the backward classes of citizens in the State.

2. The Commission was inaugurated by D. Devaraj Urs, Chief Minister, under the Presidentship of M. Mallikarjunaswamy, Minister then holding the Social Welfare portfolio, on 14th September 1972. Right from the date of its inauguration the Commission sat for preparing the Questionnaire, though the Commission was provided with the services of only the Secretary and a Stenographer. Building to house the office was not provided except two Chambers in the Secretariat—one for the Chairman and the other for the Secretary.

3. The Questionnaire was printed on 9th October 1972—both in English and Kannada—and wide publicity was given in the local

newspapers inviting requests for free supply of copies of Questionnaire. 30 days time was initially given for submitting replies to the questionnaire. At the request of certain organizations and individuals the last date for submission of replies came to be extended successively till the end of March 1973. Copies of the Questionnaire were sent to all Secretaries to Government, Heads of Departments, Tahsildars, Block Development Officers, Local Bodies like Corporations and Municipalities, Universities, other quasi-Government and Public Undertakings, and Members of the Legislative Assembly, Legislative Council and Parliament. Individuals and organizations numbering about 3000 were supplied with copies of the Questionnaire. About 700 replies have been received from individuals and communal organizations. It is unfortunate that not one Secretary to Government and not one Head of Department submitted replies to the Questionnarie. Simultaneously, with the meagre staff, the Commission requested the Directors of the Bureau of Economics and Statistics, Social Welfare and Public Instruction to collect and compile population figures, census of students at the S.S.L.C. and Vernacular VII Standard and Census of Government employees. They expressed their inability on the ground that their staff was insufficient and that they had other work on hand. The Commission then addressed letters to all the Heads of Departments, Secretaries to Government and other authorities to furnish caste- and community-wise employment particulars as on 31st March 1972. The Chief Secretary was pleased to issue a Circular dated 10th April 1973 directing the Heads of Departments to supply the information to the Commission. The Director of Public Instruction furnished the list with addresses of the Primary Schools in the State. The Chairman of the Secondary Education Examination Board expressed his inability to collect caste/community-wise particulars of students passing S.S.L.C. examination in March/April 1972 on the ground that the Board had not maintained such particulars. However, he furnished the list of the Higher Secondary Schools in the State with their addresses.

4. The Commission, therefore, had to undertake the job of corresponding with thousands of High Schools and the Deputy Directors of Public Instruction to furnish education particulars. Correspondence with those authorities took considerable length of time. In the earlier stages, some institutions did not furnish the information at all, or the information furnished by some was not in the required form. Heads of Departments also did not promptly furnish the information. The Commission, therefore, was constrained to approach the Government for conferring the powers of Court on it by appointing the Commission as one constituted under the Commissions of Inquiry Act, 1952, Central Act 60 of 1952. By Notification dated 9th October 1973 the Government was pleased to appoint our Commission under Section 3 of the Commissions of

Inquiry Act and invest it with powers under Section 5(1) and with additional powers under Sections 5(2), (3), (4) and (5).

5. The staff of the Commission was sanctioned piece-meal. In the meantime the Commission was asked to find out its own accommodation elsewhere, and so in January 1973 a private building was secured on rent.

6. Since the Central Jail authorities could not supply the furniture promptly, the Commission had to get furniture and other office equipment on hire basis.

7. It was only after the conferment of the Court powers on the Commission that various departments started furnishing the information. However, the Commission was constrained to issue summonses for their appearance and for furnishing the information, to those authorities and officers who were callous in their attitudes in spite of repeated reminders sent to them. Some who did not favourably respond were told that coercive measures would be taken if they failed to furnish the information. Officers who appeared before the Commission, pursuant to the issue of summonses to them, told the Commission that they were not deliberately delaying in furnishing the information, but they had not collected such information ever before. We then realised the difficulty under which they were labouring. Information from the Heads of Departments and Secretaries to Government regarding census of employees was supplied piece-meal and the last batch of information was received by the Commission in the month of September 1975, when as a last resort we had requested the concerned Ministers to direct their departmental heads to co-operate with the Commission's work. The Commission had compiled the particulars relating to employees, and when the information was received in September 1975 the entire compiled material had to be recast by including in it the latest information.

8. The information relating to education particulars was also received piece-meal from 1865 High Schools in the State, and from 20 Deputy Directors of Public Instruction who collected information for 1972 and 1974, by contacting more than 11,000 Primary Schools on each occasion.

9. Complaints were received that the Mysore Backward Classes Committee (1961) had not properly estimated the population of castes. The said 1961 Committee had adopted the population figures estimated to 1951 by the 'Census Department'. When the Commission went through the book-let purported to have been published by the 'Census Department' about 20 days after the appointment of the said Committee, it was found that estimation had been made on 'arbitrary' assumptions. Certain communities like

Agasa, Gangakula, Kuruba and Lingayat had been given the benefit of increase of their population by 0.9 per cent in the District of South Kanara. Certain statements contained in the book-let to the effect that the population figures of certain castes were not available appeared to be incorrect. Even so, population figures of only 30 non-Scheduled Hindu castes had been mentioned in the book-let. The book-let did not contain the name of the author, nor did it contain the name and designation of the Officer who published it. So, the Director of Census Operations in Karnataka was addressed a letter to let the Commission know the authorship of the book-let, the authenticity of the population figures and the correctness of the assumptions. The Director of Census Operations replied: 'as to the authorship of the book-let I regret to state that there are no records available in this office relating to the preparation, printing and publication of the above book-let'. He added 'that in case discrepancies of any kind are noticed between the Census data, as published by this Department for the relevant censuses and those mentioned in the above book-let, it is only the published figures incorporated in the regular authorised census Publications for the concerned Censuses, that are to be treated as authentic'. The said book-let stated that for the four districts of Bombay Karnataka area, *viz.*, Belgaum, Bijapur, Dharwar and North Kanara, 1941 Census figures had been adopted. The Registrar General, Ministry of Home Affairs, New Delhi, was requested to furnish caste-wise particulars from the 1941 census Report relating to the said four districts of Bombay Karnataka area. But he said 'the 1941 Census report of erstwhile Bombay State does not contain caste-wise and sub-caste-wise population of Hindus. It only gives the break-up of Hindus into scheduled castes and other Hindus'. The replies the Commission received from the Director of Census Operations in Karnataka and the Registrar General, India, New Delhi, were in the month of April 1974, and so the Commission had to search for the old Census Reports from the Legislature Library, Secretariat Library, Public Library, High Court Library and the Library of the Census Department.

10. Member-Secretary Y. Rupla Naik and Deputy Secretary Puttasomachary evinced considerable interest and took great pains in collecting the population figures of various castes from old Census Reports and projecting them to 1972. The mode of projection is explained in Statement 1, Volume II. The 1961 Backward Classes Committee had not collected individual caste-wise population figures for Scheduled Castes and Scheduled Tribes. But our Commission collected even those figures. The population figures for about 200 castes, tribes and communities are to be found in Volume II. The compilation of particulars relating to education was completed in March 1975 and the compilation of the employment particulars was completed during October 1975.

11. Judiciary is of the opinion that for deciding *social* backwardness of castes and communities, economic test should be applied and not the bare test of *high* and *low*. The President-appointed Commission under Art. 340 had proceeded on the principle of *caste* without collecting the empirical data about the economic backwardness of castes and communities it had enumerated in its report. The said report was not accepted by the Union Government, but a direction was issued to the State Governments that for the purpose of supplying the deficiencies found in the report, *ad hoc* socio-economic survey of castes and communities should be conducted.

12. Survey was not conducted by the State Government, and its successive efforts in determining the backward classes were disapproved of by the judiciary. The 1960 Committee, which submitted its report in 1961, also did not conduct socio-economic survey. The result was, the Government Order passed on the recommendations of the Committee was struck down by the Supreme Court in Balaji case. The reason appears to be that right from the beginning when discriminatory measures were taken by various Governments in favour of backward classes, the sole criterion adopted was the test of *caste* for deciding the social backwardness of castes and communities. It is appropriate and very relevant to state in brief the criterion adopted by all the Commissions/Committees in the determination of social backwardness of castes and communities, including that of ours.

13. The first Committee in India on backward classes was appointed by the Government of His Highness the then Maharaja of Mysore in 1918.

14. The Bombay Government in 1929 and Jammu and Kashmir Government in 1931 appointed similar committees. In the pre-Constitution days, it appears that only the said three Governments had appointed the Committees. The sole criterion adopted for deciding *social* backwardness of castes and communities was *caste*. In other words, the *status* of a caste or community in the hierarchy of castes, so far as Hindus were concerned, was the sole basis. So far as *educational* backwardness of castes and communities was concerned, English literacy was the only criterion. The third criterion was the absence of or inadequate representation in Government services.

15. After the Constitution came into force in 1950, the President of India appointed a Commission in 1953. It also went on the principle of *caste* in deciding the social backwardness of a caste or community. It did not collect data on the economic and other factors that contributed to the social backwardness. Nor did it collect the educational particulars of castes and communities for deciding their educational backwardness.

16. In 1960, the reorganised New State of Mysore appointed a Committee which also went on the sole basis of caste in deciding the social backwardness of Hindu castes as well as non-Hindu communities. It, however, adopted educational level at the last three classes of the High School for determining their educational backwardness. The said two criteria adopted by the Mysore Committee were disapproved of by the Supreme Court.

17. The Committee appointed by the Maharashtra Government in 1961 similarly went on the basis of *caste* in determining social backwardness.

The 1965 Kerala Committee under Art. 15(4) similarly went on the *basis of caste.*

18. The Jammu and Kashmir Government appointed in 1967 a Commission of Inquiry which suggested that *caste* in relation to Hindus should be the criterion. Again the 1969 Jammu and Kashmir Committee took *caste* as the sole basis so far as Hindus were concerned.

19. The Andhra Pradesh Commission of 1968 similarly adopted *caste* as the basis for determination of *social* backwardness of castes and communities.

20. The second Kerala Commission under Art. 16(4) also went on the principle of *caste.*

21. We have gone through all those Reports. None of the Commissions/Committees conducted the socio-economic survey, none of them collected the population figures of various castes and communities, and none of them collected statistics relating to the educational level of castes and communities and the adequacy or otherwise of their representation in Government services. Some of the Commissions/Committees have merely stated in their Reports that they were satisfied from personal impressions formed by general observation about the *social* and *educational* backwardness of castes and communities. In other words, they were guided by their subjective satisfaction, and even the meagre statistical data claimed to have had been collected by them, but not incorporated in the Reports, related only to the extent of 50 per cent regarding education and about 80 per cent regarding Government service.

22. In this Volume in the Chapter under the heading FINDINGS we have explained the principles we adopted in deciding the *social* and *educational* backwardness, and the materials we relied upon for such a decision.

CHAPTER IV

RELIGIONS OF INDIA TODAY

Few people realise the vastness of India. Perhaps it is as large in area as the whole of Europe except Russia, or nearly two-thirds of the United States, with a population almost three times as great. It is a country with a vaste conglomeration of nations, races, cultures and languages, far more diverse than in America or in any other country of the World. Among this huge masses of inhabitants we find the followers of every great religion; there are Christians, Mohammadans, Buddhists, Jains, Sikhs and Hindus. According to the Census of 1971 the adherents of different faiths in India number as follows:

	Population	Percentage to total population
Christians ..	14,223,382	2.60
Mohammadans ..	61,417,934	11.21
Jews ..	Negligible	..
Parsees ..	Negligible	..
Buddhists ..	3,812,325	0.70
Jains ..	2,604,646	0.47
Sikhs ..	10,378,797	1.89
Hindus ..	453,292,086	82.72

Besides the above communities there are aboriginals who are spirit worshippers, but the majority of the population is known as Hindus and their religion called *Hinduism*, while it is known among themselves as *Arya-Dharma* (the religion of the Aryans), or the *Sanathana Dharma* which means " that religion which lasts throughout the eternity ", for, according to Hindus, this religion is eternal.

2. Hinduism is a system of religion which embraces all the religious thought of the world. It stands like a huge banian tree, spreading its far-reaching branches over hundreds of sects, creeds and denominations, and covering with the innumerable leaves all forms of worship—the dualistic, qualified non-dualistic, and monistic worship of the supreme God, the worship of the incarnation of God, and also hero-worship, saint-worship, symbol-worship, ancestor-worship, and the worship of the departed souls. It is based upon the grand idea of universal receptivity. It receives everything. It is like an immense hospitable mansion which welcomes all worshippers from the lowest to the highest, all believers in the existence of God,

and it has never refused admission to any applicant for admission into its fold. The Hindu religion may be compared to the vast mosaic, inlaid with every kind of religious idea and every form of worship which the human mind can possibly conceive.

3. This religion is called Hinduism or Brahminism. This religion, indeed, is nameless and it has no founder. Buddhism, Jainism, Zoroastrianism, Christianity and Mohammadanism have their founders and they were built around the personality of their founders ; but the religion of the Hindus is not limited by any book, or by the existence or non-existence of any particular person. If we study the words of the earliest known *Rishi,* or the Vedic Seer of Truth, even he alludes to others who had seen similar truths before him. It is for this reason that the religion of the Hindu Aryans never had any special creed or dogma or theology as its guide.

4. There is no other religion in the world which is so rich in mythology, symbology, rituals and ceremonials, and which possesses so many phases of the divine ideal, as the Sanathana Dharma. They believe that one particular set of doctrines and dogmas cannot satisfy the aspirations of all human souls. The "eternal" religion of the Hindus prescribes no set path, but offers various ones to suit different minds.

5. Outside the Vaishnavas, Shaivas and Shaktas, we find Hindus who follow their phases of religion. In Punjab, there is a large population which is known as Sikhs and in Karnataka population known as Veerashaivas or Lingayats. The Sikhs and Veerashaivas in principle do not observe caste prejudices. They are very broad and liberal minded and will accept the followers of any faith in their religions. The Jains have their own scriptures and their own prophets. Jainism arose in India about the same time as Buddhism. Buddhism has civilised a large portion of Asia.

6. There are some other heterodox Hindus who are known as Brahmos and Arya-Samajis. They reject all symbols and images but worship one God who is personal and without form.

Social Status of the Indian People, their system of caste

7. But in the *social life* the Hindus are more restricted than any other nation of the world. Their society is different from that of Europe or America ; their laws are more rigid and binding. They will not associate or inter-marry outside their own caste much less with the Mohammadans or the Christians on account of their social and religious ideals.

8. Hindu people are extremely conservative in their manners and customs and this conservatism has been the outcome of

longstanding foreign rule and of continuous inroads and invasions by foreign nations. India was first invaded by the Greeks, then by the Scythians, and afterwards by Mangolians, Tartars, Mohammadans, Portuguese, Dutch and other Christians. Which nation could withstand such successive invasions and survive such repeated disasters without possessing the tremendous power of conservatism? The Egyptians, Persians, and other nations which were unable to conserve themselves in time of need have been swept out of existence. This power of conservatism has kept the nation alive and has protected the Hindus and the Hindu literature by creating impregnable social barriers which the 'destructive' forces of successive invaders have never been able to break through.

9. No foreign power can demolish the caste structure of the Hindus. It has stood for ages firm like the gigantic peaks of the Himalayas, because its foundation was laid upon the solid rock of religious and social laws.

10. Every Hindu of modern times traces his descent from great sages, saints and *Rishis* of pre-historic ages, and considers himself blessed on account of such exalted lineage. Hindus glory in the names of their forefathers and feel an unconquerable pride because of the purity and God consciousness of their holy ancestors. This noble pride has prevented the members of different castes from holding free intercourse and from inter-marrying.

11. Hindu society is divided into many hundreds of castes; each caste having its own peculiar customs and rules. If any one dares to violate such peculiar customs or the rules, he forfeits all the privileges which he may have in his life in the community. He will be deprived of social inter-course and relationship with the Hindus and of their protection. The rules of propriety and impropriety, marriage ceremonies and funeral rites, rituals and ceremonies, amusements and occupations, professions and industries, may all the details of social life must be in perfect harmony with the laws and customs which have been handed down through generations to the existing caste. These social laws are called *Jyathi Dharma* or the duties of a *Jyathi* or caste.

12. The division of society into groups is to be found in almost every country in some form but nowhere else is it so strict and so perfectly organised as in India. Each caste is like a small social republic in itself. The rules and customs of one caste do not interfere with those of another, and in this respect every caste enjoys absolute freedom as a body.

13. Outsiders and foreigners do not understand our Hindu society, because they do not belong to any of our castes, and those who do not belong to a caste cannot know anything of it. If a Hindu

violates any existing custom he must go through certain penances and austerities. Otherwise he will be excommunicated, and excommunication is the worst punishment that can be given to a Hindu. He will not be invited by other members of the same caste, neither will his invitation be accepted by them. At the time of birth, wedding or death he will be left alone and absolutely friendless in the world. No other Hindu community will take him. Nor can he join another caste, because his birthright prevents him. Such is the rigidty and power of the communal form of social government among the Hindus. These are unwritten laws. But the unwritten laws are more binding than the written laws. Strangers who come to India cannot see the reason why the members of different communities under the name of Brahmin, Kshatriya, or any other caste do not inter-marry or have free social intercourse with one another. Hindu leaders of society, in the distant past, perhaps, after trying various methods, discovered that this form of social govenrment was best suited for the Hindu people. These castes at present are not perfect. They have now become fixed entities; their laws, rules and ideals have lost their flexible nature and have become so rigid and binding that they cannot be changed. Hindus are absolutely free to choose any form of worship they like, but that has nothing to do with their *social status.* Each community has its aristocracy; higher classes, middle classes and lower classes. The lower and middle classes aspire to rise to the higher ranks of the community and expect favour, help and support from the superior classes. A man may possess enormous wealth in the community, but he can never change his birthright. Neither can be change his *Gothra.* The social status of a Hindu depends upon the rights he or she has acquired by birth.

14. The term 'caste' is the anglicized form of the Portuguese word 'casta', which means 'breed' or 'stock'. It was first applied by the rough Portuguese sailors of the sixteenth century to certain divisions of the Hindu society. It was originally used in the sense of pure, unmixed breed, but in Sanskrit there is no equivalent of such a word as caste. In the writings of the Hindus, from the Vedas down to the Laws of *Manu* and the *Puranas,* we do not find any word which has the meaning as is conveyed by the term caste. The Sanskrit word, which has been translated, is 'Varna' (colour), which implied some ethnological distinction of complexion separating the dominant from the inferior classes, the Aryans from the non-Aryan aboriginal tribes of ancient India. R. C. Dutt, in his book *Civilization in Ancient India,* Vol. I, p. 65 says "The very word *varna* which in later Sanskrit indicates caste, is used in the *Rig Veda* to distinguish the Aryans and the Non-Aryans, and nowhere indicates separate sections in the Aryan community". This distinction of colour, however, gradually gave rise to separate divisions in the Aryan community itself as in the Bhagvad Gita we read: "The Lord has divided the whole human race into four classes, according to their colour, qualifications, qualities, and works" (*vide* Chapter IV, verse 13). The four original

colours of different races were white, red, yellow and black ; and the intermixture of these four original colours has produced all the various race divisions of the world. Among the Aryans those who were white in colour were called Brahmins ; the red, Kshatriyas ; the yellow, Vaishyas; and the black, Sudras. Again, the different qualities and works of these four classes are thus described : " The duties of Brahmins, Kshatriyas, Vaishyas, as also of Sudras, are divided in accordance with their nature-born qualities. Peace, self-restraint, austerities, purity, forgiveness, and uprightness, knowledge, direct intuition, and faith in God are the *natural qualities* of the Brahmin. Of the Kshatriyas, bravery, energy, fortitude, dexterity, fleeing not in battle, gift and lordliness are the nature-born *qualities.* Agriculture, protection of cows, merchandise, and various industries are the nature born *duties* of the Vaishyas. Conscientiousness in menial service is the nature-born *duty* of the Sudras. A man attains perfection by performing those duties which he is able to do." (Vide *Bhagavad Gita,* Chapter XVIII, verses 41-45). Thus there arose a complete system of division of labour. To every caste-group its place, work, caste *i.e., rank* and remuneration were assigned.

15. This division was made perhaps during the Vedic period, or perhaps earlier ; but we find it given in the Vedas. When the Aryans first invaded India from central Asia they were highly civilized. They knew agriculture, and had wonderful social and political organisations. And when a division of labour became necessary, they divided themselves into different classes in accordance with their natural tendencies. But at first these divisions were flexible and inter-changeable. The social distinctions were not iron-bound ; neither were the occupations and professions hereditary. We read in the Vedas and other ancient writings of the Hindus that the Brahmins could intermarry with the Kshatriyas, Vaishyas and Sudras. They could also become warriors if they were so qualified. The Kshatriyas often became the teachers of the Brahmins. In fact, most of the philosophical and spiritual ideals which we have to-day were first given by the Kshatriyas. The members of this class mixed freely, and whenever any one had the qualifications of a Brahmin or a Kshatriya he was called Brahmin or Kshatriya. There were many Kshatriyas who were afterwards called Brahmins on account of their spiritual wisdom and greatness. We notice that almost all the incarnations of Divinity in India were Kshatriyas, and very few were Brahmins. Another theory about the origin of caste is given in the Mahabharata. In the Shanti Parva (Chs. 188-189) we read :

A sage *Bharadvaja* asks another sage *Bhrigu* :

If colour is the principle of differentiation of caste in the fourfold caste system, then there is indeed seen the confusion of colour among all castes ;

Desire, anger, fear, avarice, grief, anxiety, hunger, and weariness sway all of us, how then is the division of caste ?

Innumerable are the species of moving and un-moving beings ; of these various classes, whence the determination of castes ?

Bhrigu replied :

There is no distinction of castes. The whole world being created by Brahma, in the beginning consisted of Brahmins only. By actions it underwent (the distinctions of) caste.

Those twice-born men or Brahmins, who were fond of the enjoyment of desires, fierce, passionate, and daring in the pursuit of desired objects, who had abandoned their own duties, men of ruddy complexion—these attained the rank of Kshatriyas.

Those twice-born men or Brahmins, who had taken to the profession of tending cattle, who were yellow, lived by agriculture, and abode not by their own duties—these attained the rank of Vaishyas.

Those twice-born men or Brahmins, who were fond of killing and telling falsehoods, covetous, who lived by all kinds of occupations, dark in colour, and who abandoned all cleanliness—these attained the rank of Sudras.

Separated by these actions, the twice-born have undergone differentiation into castes.

16. These four main divisions of the Indo-Aryans of the Vedic period, according to their Varna (colour) and occupations gradually lost their flexible nature and became a system of hereditary castes as early as six centuries before Christ, when Buddha arose as a great reformer against the separation and distinction of *castes*. He gave a blow to the priestly power and equalized all classes of people by breaking down the barriers of this artificial hereditary caste division. Under this system if a Brahmin was a priest, his son must also be entitled to be a priest, while the son of a Kshatriya (soldier) must be a soldier. This was a course started at first with the idea of perfecting the different lines of work, and the ancient thinkers and social leaders, believing in the laws of heredity, tried to develop the qualities through hereditary transmission. Buddha, however, strove to bring the whole social system into its original simple form, and made it as flexible as it was at the outset.

17. About 600 A.D. however, Buddhism declined, corruptions crept in, and the orthodox Brahmins regaining their power, re-established the original social organization in accordance with the hereditary system of class division.

18. Chief Justice Rajamannar of the Madras High Court summarising the history of the caste system observed : " It is a matter of common knowledge that the institution of caste is peculiarly Indian. Caste as we now understand it is a social combination, the members of which are enlisted by birth and not by enrolment (*vide* Ganapathi Aiyar's Hindu law, Page 410). Whatever may be the origin of the various castes and sub-castes, it is likely that at its inception the caste system was much more elastic than it grew to be in later times. It might be, as some scholars suggest, that the primary division into four castes was based upon differences of colour and race ; but it is equally clear that the castes and certainly many, if not, most of the sub-castes were economic occupational groups.

Plato in his Republic envisaged the division of society into classes based on differences of function and occupation. It was a part of his definition of justice that the members of each class (caste), that is, followers of each occupation should know and attend to their business and did not aspire to perform the functions of members of different castes. An almost identical principle is enunciated in the Gita which dwells on the importance of following one's own 'dharma' in preference to ' paradharma '. There can be no doubt, as a modern English Philosopher has said, that the caste system in its early stages :

> " represents one of the most successful applications of a philosophic principle to the world of concrete fact that mankind has contrived ".

At the same time it is a matter of history that the system gradually hardened into a rigid frame work based upon heredity. Inevitably it gave rise to *gradation* which resulted in *social inequality* and put a premium upon snobbery. Social snobbery is not the monopoly of any race or country. But the caste system tended to develop, as it were, a group snobbery, one group, caste or sub-caste, looking down upon another group. At the bottom of the scale of social values were the members of the fifth caste, the *panchamas,* who were again members of several well-defined sub-castes. Even the best of human institutions, when it becomes mechanical and decadent, becomes also oppressive. This happened also to the caste system in India. The result was the perpetration of a certain amount of social injustice by the so-called higher castes on the lower castes and naturally the lowest of the castes became gradually the " depressed classes ".

Such is the historical background for the several provisions in the Government of India Act and in the present Constitution which attempted, and attempt to accord specially favourable treatment to those depressed classes. It is the implied assumption that the higher castes would not properly represent the needs of the lower castes, that is the basis of the principle of reservation of seats in the legislature for the depressed classes or the scheduled castes.

It cannot be denied that whatever might be the philosophical doctrine of what we now call Hinduism, so far as social customs and usages went, the caste system became an integral part of Hindu religion. It is true that religion in one sense has nothing to do with social conduct; but ethics being founded ultimately on religious beliefs and doctrines—and in so far as ethics provided the standard for social life—it was inevitable that religion should be mixed up with social conduct. That is why it has often been said that the caste system is a part of Hindu religion.

As I said before, caste system has become an integral feature of Hindu society and is bound up with the practice of Hindu religion. The well accepted scriptures of the Hindus contain references to castes as having even a divine origin. I need only give two instances, *viz.*, the famous description in the 'Purusha Suktha' and the equally well known passage in the 'Gita' in which Lord Krishna who is accepted by the Hindus as a divine incarnation speaks of the four 'varnas' having been created by him ('chathurvarniam mayasrishtam'). I am not unaware of the new interpretation sought to be put on these references and the attempt made by several modern scholars to explain the caste system as being founded on a natural division of persons according to their 'gunas', (qualities), aptitudes and conduct. But it cannot be gainsaid that in *actual practice the caste system is based strictly on birth.*

When I speak of Hinduism, I am actually conscious of the vague connotation of that word:

> Hinduism is not a religion in the sense in which we now understand the word. The word is not Indian in origin; nor was it ever used by the Hindus as the same name of their religion" (The Cultural Heritage of India, Vol. I, page 150).

But the word has come to stay and convenience requires that the word should be retained to describe a typical mode of life inclusive of religion and philosophy in the strict sense of those terms.

It must, however, be acknowledged that in spite of the fact that the doctrines of Hinduism as a religion cannot be reduced to a formal creed, it is not difficult to differentiate those who profess Hinduism from those who profess other religions like Christianity and Islam. Mr. Venkatasubramania Aiyar said that Hinduism is so all comprehensive that it can embrace every religion in the world. This is true only if by Hindu religion one understands *Hindu religious philosophy.* I do not think it is true if one takes into account *Hindu religious practice*" (*Vide* A.I.R. 1952 Madras 474).

19. Justice Gajendragadkar of the Supereme Court (who later became its Chief Justice and who is presently the Chairman of the Indian Law Commission) expressed the same opinion thus: "Though

according to sociologists and Vedic scholars, the caste system may have originally begun on occupational or functional basis, in course of time, it became rigid and inflexible. The history of the growth of caste system shows that its original functional and occupational basis was later over-burdened with considerations of purity based on ritual concepts, and that led to its ramifications which introduced inflexibility and rigidity. This artificial growth inevitably tended to create *a feeling of superiority and inferiority,* and to foster narrow caste loyalties". (*Vide* A.I.R. 1963 S.C. 649).

20. Pandit Jawaharlal Nehru powerfully summarising the whole situation said " In our own period have arisen numerous movements to break the tyranny of caste among the middle classes and they have made a difference, but not a vital one, so far as the masses are concerned. Their method was usually one of direct attack. Then Gandhi came and tackled the problem after the immemorial Indian fashion, in an indirect way. It has been direct enough, aggressive enough, persistent enough, but *without challenging the original basic functional theory underlying the four main castes.* He has already shaken the foundations of caste and the masses have been powerfully affected. But an even greater power than Gandhi is at work—the conditions of modern life—and it seems that this hoary and tenacious relic of past times must die.

" The conception and practice of caste embodied the aristocratic ideal and was obviously opposed to democratic conceptions. It had its strong sense of *noblesse oblige*, provided people kept their hereditary stations and did not challenge the established order. India's success and achievements were on the whole confined to the upper classes, those lower down in the scale had very few chances and their opportunities were strictly limited. These upper classes were not small limited groups but large in numbers and there was also a diffusion of power, authority and influence. Hence they carried on successfully for a very long period. But the ultimate weakness and failing of the caste system and the Indian social structure were such that they *degraded a mass of human beings and gave them no opportunities to get out of that condition educationally, culturally, or economically.* That degradation brought deterioration all along the line including in its scope even the upper classes. It led to the petrification which became a dominant feature of India's economy and life. The contrasts between this social structure and those existing elsewhere in the past were not great, but with the changes that have taken place all over the world during the past few generations they have become far more pronounced. In the context of society to-day, the caste system and much that goes with it are wholly incompatible, reactionary, restrictive and barriers to progress. There can be no equality in status and opportunity within its framework, nor can there be political democracy and much less economic democracy. Between these two conceptions conflict is inherent and

only one of them can survive". (*vide Discovery of India* by Jawaharlal Nehru, Chap. VI page 234).

21. After the decline of Buddhism and after the re-establishment of the original social organisation in accordance with the hereditary system of class division, the Mahomadans came and for 600 years tried in vain to destroy the social structure of the Hindus. Whoever favoured the Mahomadan ideals was ostracized and ex-communicated by the Hindus. Thus Hindu society lost many of its most brilliant men and women. Those who intermarried or associated freely with the Mahomadans were deprived of all social rights in their community, and under no circumstances could be taken back by the Hindus. Such was the abuse of power exercised by the so called descendants of the great Aryan *Rishis* and sages of ancient period. The social leaders of the middle ages were short-sighted and superstitious; they had love of power, they wished to rule over the people and keep them under their control. To-day India would have been one of the mightiest nations in the world if these short-sighted orthodox social leaders had not pursued a policy of seclusion and isolation, which resulted in absolute disunion among the members of the different classes of the Hindus. England could not have held her dominant sword over the heads of many hundred millions of people in India if there had been unity among the isolated communities and clans of the four divisions. Well has it been said by Sir Monier Williams in his book entitled *Brahminism and Hinduism*: 'And certainly the antagonism of these caste associations and trade leagues has helped us to govern the country by making political combinations impracticable'.

22. But now the conditions are changing. India of to-day is different from what she was fifty years ago. Education and intellectual progress are opening the eyes of the nation. The cry for social reform is to be heard in every corner of this vast country. People are beginning to see the defects of the existing social organism. The educated classes are now convinced that if the present conditions are allowed to continue the obsolute disintegration and complete annihilation of the national life will be the inevitable result. Thinking people are no longer satisfied with the seclusion and isolation of the different communities by iron barriers of superstition. They wish to unify all communities into one homogenous whole, to make every member feel that he is a part and parcel, not merely of a family, clan, or community, not merely a part of a section of Hindu society which is limited, but a most important part of the nation as a whole. The solidarity of all classes and all communities is the aim of our Constitution. The work has begun, but it will take a long time to make this reform effective and universal.

23. The Christians and the Mahomadans have poured their ideals into the sea of Hindu society and have created waves of radical

reform. But the advanced sections claim that the remedy has already been discovered in the all-embracing and unifying system of Vedanta, which, proclaiming the divine right of all humanity irrespective of caste, creed or colour, and teaching that all are children of God, whether Muslims, Christains or Hindus, Pariahs or Brahmins, may once more purify the social conditions, remove the evils of the caste system, uplift the individuals, bring solidarity among the members of different communities, and make the nation stand as a great civilizing power among the civilized nations of the world.

24. It has been rightly said by Kaka Kalelkar that: "The remedies will not yield the desired result within a stipulated period unless there is a nation-wide awakening through systematic propaganda and moral revival, and practical steps are taken both by the Government and people. The old taboos, along with the hierarchical segregation in the matter of food and drink and marriage, have to be overcome. A similar nation-wide social revolution, not confined to the upper classes, neither only to the Hindus alone, has to be inaugurated".

25. Similarly, Justice K. S. Hegde of the Mysore High Court (later Judge of the Supreme Court) expressed that "its solution called for statesmanship of high order".

26. Communal structure of society being the existing pattern of life for Hindus, the question whether it should be discarded in favour of a new and homogeneous society throughout the country is a matter affecting every section and every stratum of our society. It is a matter for society itself, first to feel the necessity for a change, and if it so feels, then to submit to such changes as are necessary under the changing conditions. Social changes have taken place, not always in pursuance of predetermined plans and decisions, but by gradual submission to the compelling circumstances. Our Constitution is a system of political, social and economic morals. And moral progress is a slow process. The enlightened people of the present generation should create healthy social conditions for the achievement of the said moral objectives of our Constitution.

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CHAPTER V

RECOGNITION OF CASTES FOR EQUALISATION

"Education and opportunities of growth were withheld from the lower castes who were taught to be submissive to those higher up in the scale. The caste system was a barrier to any change. For all its virtues and the stability it had given to Indian society, it carried within it seeds of destruction". Jawaharlal Nehru—*The Discovery of India.*

"The system (caste) holds Hindustan in thrall. Few escape from it, yet there can be little progress in culture, art, social improvement, or even in technical, industrial and scientific developments, until the system is shattered to bits. It will be shattered, for we have sown the seeds of liberal education and free speech which will, in time, shatter it"–Lieut. Gen. Sir Francis Tuker—*While Memory Serves.*

1. The Hindu people are inexorably divided by the hoary caste system. The division is discriminative, unsocial and undemocratic. It is deep-rooted, fundamental, and accepted as divinely ordained both by the top castes and the underdogs. There is no Hindu without a caste and there is no caste without a grade in the hierarchy. The evil of superiority and inferiority in status is so widespread that it runs through all the four castes of the *chaturvarna* and the *untouchables.* The Brahmins are divided into a number of sub-castes and the feeling of inequality is present amongst them, even as it exists amongst the other classes. Hinduism without caste is a contradiction in terms. Caste is a stark reality and severely maintained to this day and the government must face it; it cannot be ignored except at the peril of perpetuating the dominance of the upper castes and the subservience of the lower castes.

The Caste Dharma

2. The *Chaturvarna Dharma* expressed a pyramidal society with each layer fixed and immovable, thus making social revolution virtually impossible.[1] Though professing to be a revealed religion and highly spiritual, Hinduism has thrived and survived on hierarchic caste, hereditary priestcraft, endogamy, untouchability and *Karma.* It knows nothing about justice, liberty, equality and fraternity and is therefore the total enemy of democracy. "In the context of society to-day", wrote Jawaharlal Nehru, in 1944, "the caste system and much that goes with it are wholly incompatible, reactionary, restrictive, and barriers to progress. There can be no equality in *status* and opportunity within its framework, nor can there be political

democracy, and much less economic democracy. Between these two conceptions conflict is inherent and only one of them can survive "[2] *Dharma* is the central conception of Hindu religious thought and it is traditionally associated with caste duties and caste discipline. Each status-group had a *dharma* corresponding to its position on the *caste* scale. That is why Donald Eugene Smith wrote " There is nothing in Hindu thought comparable to the Western conception of natural law "[3].

3. Caste *dharma* is part and parcel of Hindu blood. M. A. Sherring said: " With many Hindus the highest form of religious observance is the complete fulfilment of the claims of caste; and most of them conceive of sin as a breach of caste discipline rather than of moral law."[4] The *Bhagvad Gita,* the most important Hindu scripture, emphasises supreme merit in performing one's particular caste duties even at the cost of efficiency. The laws of *Manu* lay down that " obedience to caste rules is the very essence of *dharma* ". The lower castes improving themselves by education, better avocations and acquisition of wealth, was never contemplated by Hindu polity. The doctrine of *Karma* occupies a central place in Hindu thought, and it has helped the Hindus to complacently accept their superior or inferior roles in life. The only way to improve life is by adhering to caste duties and looking forward to re-birth in a higher caste after death. The higher caste man is also threatened by demotion to a lower caste or even to the animal world in the next birth for misconduct.

Reformers' vain attempts

4. From the time of Buddha, tirades have been delivered on caste and its evils, but none has succeeded. Great reformers and philosophers like Basaveswara, Guru Nanak, Raja Ram Mohan Roy and Dayananda Saraswathi in trying to reform the ancient creed, only managed to found new sects and never disturbed the main stream of Hinduism. An essential assault against caste has been possible to a very limited extent only with the advent of general education and scientific knowledge as a result of British rule. The national movement for liberation spearheaded by Gandhiji coupled with his attack against untouchability, has weakened orthodoxy, but *not caste as such.* The Hinduism preached by Gandhi, though far from the beliefs and practices of the masses, has not gone without some effect at least on the urban people. As against M. N. Srinivas saying " if and when caste disappears, Hinduism will also disappear "[5], we have Gandhi's statement, that " The caste system as we know, is an anachronism. It must go if both Hinduism and India are to live and grow from day to day." It has been proved that Hinduism will not die even after vast changes. Western habits, heterodox manners, cropped heads, bare foreheads, changed diet, ignorance of Sanskrit and even inter-caste marriage make the modern Hindu a cosmopolitan

in out-door life without losing his Hindu character and special caste identity.

Constitution and Caste

5. The liberation movement pledged itself to eradicate the evils of caste and promised the untouchables and the lower downtrodden classes a better and fuller life. The Constitution of free India has made the country secular and socialist. Justice, liberty, equality and fraternity have been enshrined in it. In 1951, Jawaharlal Nehru, as Prime Minister, interpreted the Constitution by saying: "After all, the whole purpose of the Constitution as proclaimed in the directive principles is to move towards what I may call a casteless and classless society. It may not have been said precisely in that way; but that is, I take, its purpose, and anything that perpetuates the present social and economic inequalities is bad."[6] Former President Radhakrishnan has spoken on several occasions in those terms. But nothing much has been achieved as the aims were just pious and insincere. It is necessary that one more clause is added to the directive principles to say "that it shall be the duty of the State to eradicate the caste system for bringing about a casteless society".

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6. In spite of the noble sentiments given expression to by great men, the fact remains that after independence, caste feelings and caste organisations have become stronger because of the unyielding power of vested interests pitched against the democratic element in our Constitution. When caste is not destroyed it is natural for all castes to aspire for their proper share in the administration and public life of the country. The naked realities of caste have been recognised by no less a person than the good disciple of Gandhi, Kaka Kalelkar, who states as the Chairman of the Backward Classes Commission, that

> "The religious caste complex has become so deep-rooted that it is not easy for any caste-group to get away from its strong grip. Even the most intellectual including those who declared themselves to be enemies of castes, are not often entirely free, and consciously or unconsciously they act in a manner which gives a fresh lease of life to the caste system. Both by the force of inherited habit and the training imparted to an individual, he feels a deep loyalty to the caste-group. That loyalty is so deep that he is generally unable to shake it off even when he is intellectually convinced that it is baneful. The social differences of caste have become so firm in the mind of the Hindu that he regards them as natural. The two important elements in the Hindu caste system are endogamy and hierarchy. The desire to keep themselves pure is responsible for the rigid observance of endogamy. The feeling of inferiority has resulted in caste hierarchy."[7].

7. How this endogamy and hierarchy were maintained and continued successfully for millennia, has also been very correctly explained by Kalelkar in the same Report. There was a systematic suppression behind the rules and codes of social conduct. The leaders of society thought that the upper classes could be safe only by maintaining the ignorance and poverty of the masses. The latter were told that the social arrangement was ordained by God. The theory of *Karma* and *Re-birth* were misused to sustain such an arrangement. The masses were told that they would be punished in the other World for any violation of the social laws and that they would be rewarded by way of better status in the next life if they remained humble, docile, and serviceable. Such were the ideas of justice and retribution that were laid down to support the sociai injustice of the minority towards the ignorant majority. Constant preaching for generations produced a mentality which perpetuated itself through ignorance and inertia. *Even the kind in the olden days could not ignore the social laws thus prescribed; his duty was merely to uphold the recognised social order.* These ideas have sunk so deep into the social fabric that even to-day people feel that the social order inherited from their forefathers is the best arrangement; that it had the sanction of religion and morality, and therefore, of God. The poor and ignorant people think that it is a social virtue to submit to all restrictions, privations, and humiliations enjoined by the social order. A good many of the upper classes honestly feel that there is nothing objectionable in keeping the untouchables down or in treating the other Backward Classes with contempt. The pervasive influence is such that the reforms introduced by Government are accepted by the orthodox in a spirit of helplessness and with a feeling that it is the effect of *Kaliyuga.* The result is that while there is abject obedience and conformity to reform, it is effected without any corresponding change in the social outlook of the people [8].

8. Kaka Kalelkar has clearly denounced the false and selfish theories that have been foisted on the credulous people to assert and sustain the barbarous and unhuman caste system. Absolutely convinced of the injustice done to the lower classes and the sorry plight in which they are placed in free India, he made recommendations of a revolutionary character to improve their conditions. The recommendations were not accepted by the Union Government on the grounds that the Kalelkar Commission did not collect empirical data on the social and economic conditions of the castes, that it branded large population as backward and that it applied only the principle of *caste* for determination of *social* backwardness of the communities.

9. The real communalist is not the person who fights for the acquisition of the basic human rights of education, wealth and share in rulership but the one who has the monopoly of them and fights

to retain and continue them, As Radhakrishnan has stated caste " degenerated into an instrument of oppression and intolerance and tended to perpetuate inequality and develop the spirit of exclusiveness "[9]. K. M. Panikkar, referring to the caste division, said that caste " divided the Hindu people into such small units as to render the development of any common social feeling impossible. In fact it is a negation of the idea of society "[10].

10. If the lower caste people tend to live in isolation within their own particular caste it can only be ascribed to their ignorance, poverty, and helplessness. But when the upper castes seek to preserve the caste system, it is definitely to perpetuate their dominance for selfish aggrandisement.

11. Caste is nothing if it is not endogamy. Brushing aside the theories for the origin of caste, such as colourbar, the idea of pollution, food habits and racial arrogance, B. R. Ambedkar said that " prohibition, or rather the absence of inter-marriage-endogamy is the only one that can be called the essence of caste when rightly understood "[11] and that all other characteristics are just derivatives of endogamy. Further, endogamy becomes more rigid and pronounced when different castes are unequally placed. Caste is after all an extended family in which certain habits, customs, heritage and environment are common. There is security, homeliness, oneness, and identity of interest in marriages between persons of the same caste. There is really nothing to complain about this. But the trouble arises only when castes are arranged in a hierarchic order and the principle of superiority and inferiority is injected into the castes, and the best of the world are reserved exclusively for the superior groups. This unequal development naturally leads to the superior groups aggrandising the administration and the professions. That the first step in a democratic set up steering its course towards a socialist welfare state is fair share in the benefits of the world in proportion to each caste's or community's numerical strength in the population is urged by some intellectuals, until caste system is abolished.

12. Rationalists and socialists have agreed that the sovereign remedy to destroy caste is inter-caste marriage. Co-education in India has not resulted in inter-caste marriages even on a small scale. Even there, people seem to choose partners from their own castes. For a student, the economic and social compulsions are not strongly felt. Radhakrishnan advocated a judicious intermingling having regard to the hereditary and social environment. " Marriages " he wrote, " should be not necessarily in one's own caste but among members of approximately the same level of culture and social development".[12]. Favourable conditions for such judicious and cultural inter-mixing can be created only by raising the economic, educational and social standards of the lower castes.

13. S. Chandrasekhar, former Minister for Health and Family Planning, Government of India, and an expert in population problems, pleaded: "May I suggest that the Government launch an active nation-wide campaign against caste, particularly in our schools and colleges, where young and impressionable minds can be taught democratic attitudes to counteract the undesirable influences of the home in this matter. Since the only effective solution to the caste system is inter-caste marriage on the widest scale, the education of our youth in democratic attitudes and ideals is a necessary prerequisite. Once we create public opinion in favour of inter-caste marriages, we can even propose legislation barring marriage in one's own caste." The fact is, no such national campaign against caste has been initiated and when begun, will not bear much fruit without compulsions.

14. As one of the measures for encouraging inter-caste marriages, a suggestion was made to Prime Minister Indira Gandhi for reserving Government jobs for those who married outside caste. While she condemned casteism and expressed that it had to be removed, she described such suggestions as fantastic and said job reservation was no solution.[12a]

15. It must be said that division of the people into castes, besides hierarchy in it, is a fact that cannot be ignored. Justice has to be rendered to the people on that ground under democracy, and at the same time Government must launch a programme to equalise all the castes. Hence the Constitution suggests *recognition of castes for their equalisation.*

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CHAPTER VI

CLASSES OF CITIZENS

Natural and ordinary meaning :

1. It may appear strange and unsupported when we say at the outset that under the Constitution of India the expression " classes of citizens " means groups of people associated with their religion, race or caste.

The said expression is used in Articles 15, 16, 29 (by virtue of clause 4 of Article 15), 338 and 340. The said Articles are reproduced below for immediate reference.

> 15(1) The State shall not discriminate against any citizen on grounds only of *religion, race, caste,* sex, place of birth or any of them.
>
> (2) No citizen shall, on grounds only of *religion, race, caste,* sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to--
>
> (a) access to shops, public restaurants, hotels and places of public entertainment ; or
>
> (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
>
> (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally *backward classes of citizens* or for the Scheduled Castes and the Scheduled Tribes.
>
> 16(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
>
> (2) No citizen shall, on grounds only of *religion, race, caste,* sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
>
> (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any *backward class of citizens,* which in the opinion of the State, is not adequately represented in the Services under the State.
>
> 29(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of

State funds on grounds only of *religion*, *race*, *caste*, language or any of them.

15(4) Nothing.... in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally *backward class of citizens* or for the Scheduled Castes and the Scheduled Tribes.

340(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their conditions and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) The Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

338(1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under Clause (1) of Article 340, by order specify and also to the Anglo-Indian Community.

Since Article 338 makes a reference to the " Scheduled Castes ", " Scheduled Tribes " and the " Anglo-Indian " community, the relevant Articles of the Constitution are mentioned below :—

341(1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which

shall for the purposes of this Constitution be deemed to be scheduled castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor, thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

(2) " an Anglo-Indian " means a person whose father or any of those other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purpose only ;

(24) " Scheduled Castes " means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution ;

(25) " Scheduled Tribes " means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.

2. Part XVI of the Constitution, which contains articles 330 to 342, intends to make special provisions relating to certain *classes*. It is common knowledge that India is a land of many castes, tribes, tribal communities, races and many religious communities with their respective sections. " There are some Jews there and many Christians. There are many millions of Mohammadans in that land.

There are Buddhists, Jains, Kabir Panths, Sikhs. There are the Brahma Samaj and the Arya Samaj. There are, in the hill country, worshippers of trees, rivers and spirits. In India today there are many religions and religious sects. The followers of *Brahminism* still believe in the holiness of the *castes*. *Brahminism* is the only religion in the whole world teaching the belief in the division of people into castes"[1]. "The religion which best illustrates not only the general line, but also the immense diversity and complexity within that pattern, is Hinduism. Hinduism is prehistoric, and India has been called the 'Cradle of Religion'. The two main ideas that unite Hindu religious thought are reincarnation and the principle of *caste*".[2] "Within India, Jews, Christians and Muslims are affected by it (caste) in varying degrees. There are the Rajput Muslims in Uttar Pradesh.[3] The tribes and the tribal communities live in forests and hills. They have been specified by the President as Scheduled Tribes under Article 342. There is a presumption in law that they are Hindus, but some do not belong to any known religious community.[4] But there are some tribals who are Muslims and Christians.[5] There are tribals who are Buddhists. There are the Anglo-Indians who form a community of their own on the ground of their descent in a particular way. Although the Constitution, at some places, says that the State shall not make any discrimination against a citizen on grounds only of religion, race, caste, or descent it does not make discrimination in favour of the Anglo-Indian community on ground of their descent, in favour of the Scheduled Castes on ground of their religion and caste and in favour of Scheduled Tribes on ground of their race. Reservation of seats for the Scheduled Castes and Scheduled Tribes, and the Anglo-Indian community in the Parliament and the State Legislatures, and in the Government services have been made. There are other provisions which need not be referred to here. As the heading of Part XVI shows, such castes, tribes, races and their groups, and the Anglo-Indian community are *classes* of citizens associated with their religion, race, caste or descent. The framers of the Constitution did not find any difficulty in defining the Anglo-Indian community, and the same is defined as a community of certain descent. Scheduled Tribes have been defined and specified because of their race, and residence in forests and hills. Scheduled Castes have been defined and specified on the ground of their religion and caste, because it is the Hindu religion that practices *Untouchability* amongst its castes.[6-7]. The Constitution recognises the factual existence of castes, tribes, races, religious communities and people of peculiar descent. In Part XVI each of such groups is termed as *class*. Census Reports, Gazetteers, anthropologists, social scientists, etc., have described each caste, tribe, racial community or group and religious community as a *class*. Articles 338, 341 and 342 authorise the President to specify the factually existing social *classes* but they do not authorise him to make any *new* classes. It is accepted that Scheduled Castes and Scheduled Tribes are socially and educationally backward *classes* of citizens. Indian society consists of *other classes*

also, and of them some are also socially and educationally backward. Scheduled Castes and Scheduled Tribes were discriminated against for long in social, economic, educational and political fields, and so they deserve to be protected, and their interests in those fields promoted. They were subjected to all forms of social injustice and exploitation. Therefore, as one of its fundamental principles of directive policy, the State is enjoined with the duty of ameliorating the conditions of the Scheduled Castes and Tribes (Art. 46). Indian Society is not rigidly divided into Scheduled Castes, Scheduled Tribes and the rest. There are other classes who are similarly subjected to social injustice and exploitation. They also are similarly discriminated against in social, economic and educational fields. The Constitution, for them too except the political safeguards, intends for makings special provisions.

3. The other *backward classes* referred to in Articles 15, 16 and 29 are to be specified by the President under Article 338 (3) on the receipt of the Report of the Commission appointed under Art. 340. Hence, the expression *backward classes* should have a uniform meaning throughout. Let us first take Art. 29 (2). The non-discriminatory grounds in matters of admission to educational institutions of the kind mentioned therein are religion, race, caste or language. Art. 15 (4) is an exception also to Art. 29 (2). When an exception is to be made to Art. 29 (2) in favour of the backward classes the only grounds could be all or any of the non-discriminatory grounds. That is to say, the *classes* to be favoured should be determined on grounds of religion, race, caste or language. The ground of language is a vague and indefinite basis and individuals forming such a group overlap indiscriminately. In a recent case the Calcutta High Court[8] in interpreting the meaning of the expression *classes of citizens* as it occurred in section 153-A of the Indian Penal Code held that the term 'non-Bengali' cannot be included in the term *class*. Hence, what remain to be the only grounds of exception under Art, 29(2) read with Art. 15 (4) are *religion, race* and *caste*. Backward classes for whose benefit special provisions can be made under Art. 29 (2) read with Art. 15 (4) are groups of citizens associated with their religion, race or caste. The expression *backward classes* used in the Constitution is, at all places, associated with *religion, race* or *caste*. And whenever the said expression is used the common grounds of non-discrimination are religion, race and caste. The backward classes (other than the Scheduled Castes/Tribes) are to be benefitted only under Art. 15, 16 and 29. Grounds common in all these Articles are *religion, race* and *caste*. The expression commonly used in all these articles as an exception is *backward class*. Therefore, *classes* are groups of citizens associated with their *religion, race* or *caste*. This exposition is in consonance with the fundamental rule of interpretation that if the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case

best declaring the intention of the legislature[9]. It is very desirable, in all cases, to adhere to the words of an Act of Parliament giving to them that sense which is their natural import in the order in which they are placed[10]. Similarly when the language is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation.[11]

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CHAPTER VII

CLASSES OF CITIZENS (*continued*)

Context

1. It is already stated that the expression *classes of citizens* occurs in Articles 15(4), 16(4), 29(2) read with Articles 15(4), 338(3) and 340. Under Article 338 it is the President who can specify the backward classes. If the President has not so specified, it has been held by the Supreme Court [1] that the State Government is competent to determine the backward classes. But this does not mean that the State Government can do so in a manner different from the manner the President could have done. Therefore, the backward classes to be determined by the Government are those referred to in Article 338(3). Articles 338 and 340 come in Part XVI of the Constitution relating to the making of special provision in favour of certain classes, viz., the Scheduled Castes, Scheduled Tribes, such other backward classes and the Anglo-Indian community. The word *classes* in the heading covers, therefore, castes, tribes, races and communities. The true meaning of the word *classes* cannot be correctly ascertained if it is dissected from the context in which it is used. The true meaning of any passage, it is said, is to be found not merely in the words of that passage, but in comparing it with other parts of the law ascertaining also what were the circumstances with reference to which the words were used, and what was the object appearing from those circumstances which the legislature had in view. Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible to make a consistent enactment of the whole statute or series of statutes relating to the subject matter.[2] What is meant by the ordinary and grammatical sense of the words is this ; most words have a primary meaning, that is, a meaning in which they are generally used, and a secondary meaning, that is, a particular meaning in which they are used in a particular context.[3] It is, however, equally well settled that the meaning of the words used in any portion of the statute must depend upon the context in which they are placed. Moreover, in interpreting an enactment all its parts must be construed together as forming one whole and it is not in accordance with sound principles of construction to consider one section, or group of sections alone, divorced from the rest of statute. Further, so far as possible that construction must be placed upon words used in any part of the statute which makes them consistent with the remaining provisions. The words may be given a wider or more restricted meaning than they ordinarily bear if the context requires it.[4] In construing a particular section of an Act, one must look at the whole Act, and it is necessary to consider the context in which such section occurs.[5] Different sections, amendments and provisions relating to the same subject-matter must

be construed together and read in the light of each other.[6] A Constitution likewise, must be read as a whole.[7] A constitution does not mean one thing at one time and another subsequently.[8] It is a fundamental error to detach the first portion of a section and settle its meaning first, ignoring even the rest of the section, and then proceed to apply the remainder of the section on the basis that the meaning of the first part is already fixed. We must read the whole section, and perhaps the whole Act, to ascertain the meaning of a section.[9] We are not to pull the phrase to pieces and consider the various meanings of its component parts, if, when so read, it has a known signification, that should *prima facie* be taken to be its meaning in the statute.[10] It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words in immediate connection with them.[11] The method of construing statutes is to read the statute as a whole and ask myself the question: In this statute, in this context, relating to this subject matter, what is the true meaning of that word.[12] Maxwell says that language is rarely so free from ambiguity as to be incapable of being used in more than one sense, and to adhere rigidly to its literal and primary meaning in all cases would be to miss its real meaning in many. The equivocation or ambiguity of words and phrases and especially such as are general is the greatest sophism of sophisms. Words used with reference to one subject-matter or set of circumstances may convey a meaning quite different from that which the same words used with reference to another set of circumstances and another subject-matter would convey.[13]

2. One of the safest guides, it has been said, to the construction of sweeping general words, which are difficult to apply in their full literal sense, is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them and if it is found that a number of such expressions have to be subjected to limitations and qualifications, and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a like limitation and qualification.[14]

3. Part XVI of the Constitution of India makes a reference to certain *classes*. The Scheduled Castes are *classes*. The Scheduled Tribes are *classes*. The Anglo-Indian community is a *class*. According to the construction of Article 338(3) references to Scheduled Castes and Scheduled Tribes shall include references to such other backward *classes*. Caste means a class, and reference to caste includes reference to class. Tribe means a class, and reference to tribe includes reference to class. Anglo-Indian community means a class, and reference to community includes reference to class. The word class is not used in its wider meaning. It means, a caste or a tribe or a community. Applying the above mentioned principles of construction the word *classes* used in Articles 15, 16, 29 and 338

means nothing but castes, tribes and communities. It is said that the Constitution has not defined the expression *backward classes of citizens*. It is to be said that it does not require any definition. Article 338(3) is an explanation to the defined expressions of Scheduled Castes, Scheduled Tribes and Anglo-Indian community. Constitution has left no ambiguity whatsoever as regards the meaning of the term *other backward classes*. They are castes, tribes and communities other than the classes of 'Scheduled Castes', the classes of 'Scheduled Tribes' and the class 'Anglo-Indian Community'. But Article 338(3) says that they should be *such* as are the Scheduled Castes and the Scheduled Tribes. The word *such* in Article 338(3) is an important word. It means according to

I. *Oxford* dictionary:

—Of the character, degree or extent described, referred to, or implied in what has been said; of the same kind or class as something mentioned or referred to; of that kind, similar; the like; (Equivalent to the descriptive adjective or adverb on which it follows closely and the repetition of which is thus avoided). Previously described or specified.

II. *Webster* dictionary:

—Of that or the like kind or degree; similar; like; the same as mentioned or specified; belonging to that class; already named or pointed out, or which could have been named or pointed out had the speaker pleased.

Scheduled Castes, Scheduled Tribes and the Anglo-Indian community have been defined, and specified by the President. But the definition of the term *such other backward classes* is avoided, because it closely follows the terms castes, tribes and community and its definition would be a repetition. The *such other backward classes* are of the same character, degree or extent in backwardness as are the Scheduled Castes and Scheduled Tribes already defined and referred to. *Other Backward Classes* should be so backward that they could be pointed out or named as Scheduled Castes or Scheduled Tribes if the President of India was, now the Parliament is, pleased to do so. Agriculturists, petty business-men, artisans and menial servants do not form a caste, a tribe or a religious community and so also individuals of poor economic income.

Again, Scheduled Castes and Scheduled Tribes are to be specified by the President. In the same way, the other Backward Classes are required to be *specified* by the President. Can there be a *specification* of individuals in this vast country, of agriculturists, petty business-men, artisans and menial servants, if, as claimed by some, they are to be treated as backward ?

4. At this juncture it is quite appropriate to refer to Articles 23, 25 and 46. Some sections of the people, particularly the

Scheduled Castes and the Scheduled Tribes, have been subjected to all forms of exploitation and social injustice. Article 23 gives a citizen fundamental right against exploitation, and Article 25 right to freedom of religion subject to certain restrictions. The said Articles read as under :

> 23 (1) Traffic in human beings and *begar* and similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
>
> (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or *class* or any of them.
>
> 25 (1) Subject to public order, morality and health and to the other provision of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
>
> (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
>
> (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of public character to all *classes* and *sections* of Hindus.
>
> *Explanation*: 1. The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.
>
> *Explanation*: 2. In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.
>
> 46. The State shall promote with special care the educational and economic interests of the *weaker sections* of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

In Articles 23(2) and 25 the terms *class* and *section* are equated to *caste*. It can be seen in Article 23(2) the conspicuous omission of a comma and the deliberate use of the word *or* between *caste* and *class*. In Articles 15, 16 and 29 a comma is placed after every such word, whereas in Article 23(2) the word *or* is used signifying *caste* as *class*. This is further substantiated by Article 25 which provides for the State to make any law providing for the throwing open of Hindu religious institutions of public character to all *classes* and *sections* of Hindus. It is common knowledge that Hindu (including Sikh, Jain and Buddhist) temples in the past were, and to some extent even now are, closed to *certain classes* and *sections* of Hindus.

The denial of entry to a person is not because he is economically poor, not because he is an agriculturist, nor because he is an artisan but because of the only ground that he belongs to one of the Shudra or untouchable castes. In these articles it can be said that, so far as Hindus are concerned, the word *class* is equated to *caste*.

Doctrine of ejusdem generis or the rule of noscuntur a sociis:

5. When two or more words which are susceptible or analogous meaning are coupled together *noscuntur a sociis.* They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general. The expression, for instance, *places of public resort* assumes a very different meaning when coupled with *roads* and *streets* from that which it would have if the accompanying expression was *houses*[15]. Articles 330 to 342 relate to certain *classes.* These classes are castes, tribes, races, (such other classes) and also the Anglo-Indian community. The general word class is preceded by the words *castes* and *tribes,* and followed by the word *community.* The analysis of Article 338(3) shows that the word *class* is found in the midst of specific words like caste, tribe, and community. Thus Lopes, L.J. in *Smelting Company of Australia* vs. *Commissioner of Inland Revenue*[16] observed: "I think the proper way of construing those words is to apply to them what is known as the *ejusdem generis* doctrine, or as it is sometimes expressed the doctrine of *noscuntur a sociis* which is that, where general words immediately follow or closely associated with specific words their meaning must be limited by reference to the preceding words". Broom in *Legal Maxims*[17] in regard to the construction of statutes says that " in the construction of statutes, likewise, the rule *noscuntur a sociis* is frequently applied, the meaning of a word, and, consequently, the intention of the legislative being ascertained by reference to the context, and by considering whether the word in question and the surrounding words, are, in fact, *ejusdem generis* and referable to the same subject-matter". In *Kempton Park* case[18] Lopes, J., said " that the doctrine may be thus expressed namely, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified". Scheduled Castes have been defined and specified. Scheduled Tribes have been defined and specified. Anglo-Indian community has been defined. *Class* follows *caste* and *tribe. Class* is followed by *community.* Therefore the meaning of the word *class* is confined to the kind of the already defined and specified *castes, tribes* and *communities.* When the conditions of this doctrine[19] are applied it is clear that:

1. Art. 15(4) of the Constitution of India, Part XVI and more particularly Article 338(3) of the said Part, contain an enumeration of some *classes* by specific words like *castes, tribes* and *communities;*

2. the enumerated *castes, tribes* and *communities* constitute *classes ;*

3. the enumeration of those *classes* (namely castes, tribes and communities) is not exhausted ;

4. the general word *classes* (other than Scheduled Castes and Scheduled Tribes) follows the enumeration of specific *castes, tribes* and *communities ;*

5. the word *class* is a distinct genus which comprises more than one species (i.e., castes, tribes and communities) ;

As already shown, Article 338(3) is in the nature of an explanation of the defined expressions of Castes and Tribes Scheduled by the President and the Anglo-Indian community[20]. Article 338(3) is more an interpretation clause, which states that Castes and Tribes (Scheduled) *include* other backward *classes*. The Schedules of the castes and tribes have enumerated some castes and tribes. The definitions of the *Castes* and *Tribes* are retained but their scope is widened by specific enumeration of more castes and tribes. The Schedules of Castes and Tribes issued under Article 341 and 342 are not exhaustive and that therefore Article 338(3) gives scope for further enumeration. It has been held[21] that " when in an interpretation clause it is stated that a certain term *includes* so and so it implies that the term retained its ordinary meaning which it may mean."

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CHAPTER VIII

HISTORICAL, LEGAL AND CONSTITUTIONAL MEANING

Introductory

1. It may be asked why we should further endeavour to find out the *meaning* of the word class, when it is clear and unambiguous. It is not without reason.

1. The Supreme Court[1] in 1951 said, while dealing with the communal G.O. of the Madras Government, that it was " in the circumstances, impossible to say that classes of people other than Harijans and Backward Hindus can be called Backward Classes "

2. The Backward Classes Commission[2] was not unanimous in suggesting suitable criteria for the determination of Backward Classes.

3. The Supreme Court[3] in 1963 said, in dealing with the *scope* of the expression backward classes under Art. 15(4), " How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are *socially* backward or not? The test of *castes* would be inapplicable to those groups, but that would hardly justify the exclusion of those groups *in toto* from the operation of Art. 15(4) ". And while striking down the G.O. categorising the backward classes one of the reasons was that the "impugned notification categorised the backward classes *on the sole basis of caste* which, in our opinion is not permitted by Art. 15(4) ".

One is apt to be confused as to the *meaning* of the term *backward classes,* and the defining of those *classes.* The doubt may arise in these ways :

1. Whether the backward classes are to be determined only from among the Hindu community ?

2. Whether they are to be determined from among the Muslim, Christian and other religious communities as well ?

3. Whether the unit of *specification* should be an individual or a distinct and readily identifiable communal group ?

In 1951 Supreme Court case,[4] the Madras Government Order purporting to be under Art. 16(4), which said that all the posts would be filled in a fixed proportion amongst the (i) Harijans, (ii) Muslims, (iii) Christians; (iv) Backward Hindus, (v) Non-brahmin

Hindus and (vi) Brahmins was assailed. Candidates coming in any of the group could try to secure posts in that group *only*. There were no posts in the general pool. Posts were allotted to each communal compartment. The Service Recruitment Rules contained a list of *classes* who were regarded as backward classes. It contained only the Hindu castes. Therefore, in that context, their Lordships said " It is, in the circumstances, impossible to say that classes of people other than *Harijans* and backward *Hindus* can be called backward *classes* ".

Art. 340 provides for the appointment of a commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or the State to remove such difficulties and to improve their conditions etc., When such report is received, the President may *specify* the backward classes so that help could be extended to them under Arts. 15, 16 and 29. The recommendations made by the Commission proved abortive. The Commission was appointed on 29th January 1953. The final report was submitted to the President on 31st March 1955. Kaka Kalelkar, the Hon'ble Chairman of the Commission, has written a covering letter which is in the nature of a dissenting note. The Report has given scope for expression of speculative opinions. Therefore, I refrain from deriving any assistance from the Report at regards the *meaning* of the expression Backward Classes.

As regards the doubts that are likely to be entertained as in (2) and (3) above, they will automatically be dispelled by a perusal of the next pages.

2. Some Members of the Kalelkar Commission proceeded to give *meaning* to the expression *backward classes* on the bare consideration of the terms of reference. It is needless to say that it is improper, unless the whole law had been examined, to give advice upon the meaning of that expression. The Commission should have examined the historical, legal and constitutional meaning that is given to the *backward classes*. It is an elementary rule that construction is to be made of all parts together, and not of one part only by itself[6]. They should have also considered the meaning publicly given by long usage if they felt that the etimological meaning was some-what different. Some of the members of the Kalelkar Commission assumed first of all that the Constitution had a particular intention and then having made up their mind, concluded that *backward class* meant an impoverished individual, a woman, a villager and so on. A word is but a symbol which may stand for one among innumerable objects. But they should have considered the history, usage, custom, debates in the Constituent Assembly and Proceedings of Parliament, judicial decisions, other

laws where the expression has been used in *pari materia* and the context in which the said expression has been used in the Constitution.

3. I shall proceed to refer to different circumstances, documents, communications, decisions, constitutional definitions, etc. to find out its *meaning,* and banish the doubts.

Usually, laws of great general importance come about as the result of long periods of agitation. The question naturally arises: why should contemporaneous circumstances shed any light upon the legislative intent ? The answer is obvious. These circumstances constitute the reasons why the statute was enacted. They are part of the *res gestae.* Moreover, it must be assumed that the needs and the desire of the people will find expression in the enactments of the Legislatures consisting of representatives of the people. If this were not so, then there would be little, if any, justification for resorting to the circumstances surounding the enactment of a law in an effort to ascertain the legislative intent.

" Three cannons of construction seem applicable in this case. First, that the statute is to be construed, if possible, according to the ordinary grammatical construction of the phraseology used in it. Secondly, if there be doubt as to the construction, or if a construction according to strict grammer would lead to a manifestly unreasonable or absurd conclusion, the statute must be considered with regard to the state of the law at the time when it was enacted ".[6]

In construing a statute the Court is entitled to look at the history of prior legislation, specially look at the statutes which are in *pari materia* and which with the same subject[7]. In case of doubt or uncertainty statutes in *pari materia* are to be construed together; each legislative Act is to be interpreted with reference to other Acts relating to the same subject, or the same class of persons or things. The concept of grouping of statutes relating to the same subject matter and their comparison in aid of construction was affirmed and recommended by Blackstone. In his Rules of Interpretation he directed " the comparison of a law with other laws that are made by the same legislator, that have some affinity with the subject, or that expressly relate to thee same point ".[8] Statutes which relate to the same subject, the same person or thing, or the same class of persons or things, are deemed to constitute one system of law; they are considered as one statute, subsequent laws are regarded as supplementary or complementary to the earlier enactments. When enacting a new law the legislature is presumed to have had in contemplation the existing statutes on the same subject, and to have framed its enactment with reference thereto. This is the real basis for the rule in *pari materia.* " It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and intended to be consistent and harmonious in its several parts and

provision. It is therefore an established rule of law that all Acts in *pari materia* are to be taken together as if they were one law ; and they are directed to be compared in the construction of statutes, because they are considered as framed upon one system, and having one object in view ".[9] The rule is thus an extension of the principle that the whole statute is to be viewed and compared in all its parts in order to ascertain the meaning of any of its parts. All laws relating to a particular matter or subject, that is, laws in *pari materia,* bear the same relation to any law within the group or system as the whole statute bears to any of its several parts. Repealed and expired laws bearing upon the same subject are deemed to be of assistance in the construction of a given statute.[10] Where there are different statutes in *pari materia* though made at different times, or even expired and not referring to each other they shall be taken and construed together as one system and as explanatory of each other.[11]

If the legislature in one Act has used language which is ambiguous, and in a subsequent Act has used language which proceeds upon the hypothesis that a particular interpretation is to be placed upon the earlier Act, the Judges have no choice but to read the two Acts together, and to say that the Legislature have acted as their own interpreters of the earlier Act.[12] The later Act sometimes furnishes a legislative interpretation of the earlier[13] if it is in *pari materia* and the provisions of the earlier Act are ambiguous.[14] " Great regard ought to, in construing a statute, be paid to the construction which the sages of the law who lived about the time or soon after it was made put upon it, because they were best able to judge of the intention of the makers at the time when the law was made."[15] The language used by the legislature must be construed in the sense which the words as applied to the subject-matter ordinarily bear in the country where the statute is enacted and the words must further be construed according to the meaning which the words bear at the time when the statue was passed.[16] It has been laid down that " where the pending of a statute is dubious, long usage is just a medium to expound it by : for *jus etnorma loquondi* is governed by usage, and the meaning of things spoken or written must be as it hath constantly been received to be common acceptation ".[16a] General usage under a statute may make for a practical construction of it which will be accorded great consideration by the Courts. General usage, of long duration and there-to-fore unquestioned, will frequently be of great assistance in the search of legislature meaning.[17]

" In coming to a determination as to the meaning of a particular word in a particular Act of Parliament, it is permissible to consider two points, viz.,

(i) The external evidence derived from extraneous circumstances such as previous *legislation* and *decided cases,*

(ii) internal evidence derived from the Act itself."[17a]

In interpreting words and phrases, it is permissible to refer to the previous history and decided cases as also to external evidence such as extreneous circumstances.[18] The question of conctruction of Article 311 must be decided upon a historical approach, that is, regard must be had to historical facts, to the surrounding circumstances and the state of the law at the time of the Constitution. The expression 'removal' and 'dismissal' in the Article must be given the *same meaning* which was given in the statutory rules and regulations which were existent at the time the Constitution was enacted.[19] Justice Homes of the Supreme Court of United States observed: "It is said that when the meaning of language is plain, we are not to resort to evidence to raise doubts. That is rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists. If Congress has been accustomed to use a certain phrase with a more limited meaning than might be attributed to it by common practice, it would be arbitrary to refuse to consider that fact when we come to interpret a statute.[20]

Where words and expressions in a statute are plainly taken from earlier statutes *pari materia* which have *received judicial construction* it must be assumed that the legislature was aware of such interpretation, and intended it to be followed in later enactments.[21] When certain words used in a statute have received judicial interpretation and are repeated in a subsequent statute, it is to be assumed that the legislature has used them in the same sense in which they have been judicially interpreted.[22] Where words have been used which have acquired a legal meaning it will be taken *prima facie* that the legislature has intended to use them with that meaning.[23] Again in cases where the words used have acquired a *technical meaning* which is well-known, or where they have acquired a *legal meaning* by decisions of the Courts, it may be presumed that the legislature used the words in the *technical* or *legal* sense, as the case may be, rather than in the ordinary sense.[24]

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CHAPTER IX

ORIGIN OF THE TERM 'CLASSES OF CITIZENS'

The origin of the term *class* signifying a caste, a tribe or a community may be traced to the latter part of the 19th century. When the Indian National Congress was founded in 1885 it was felt by the leaders that the National Movement should not be exclusively political and that side by side questions affecting Indian social economy should also be discussed and that the best endeavours of all should be put forth for vitalizing Hindu society by removing all social evils and social wrongs. Dewan Bahadur R. Raghunatha Rao and Justice (then Rao Bahadur) M. G. Ranade delivered addresses on the question of untouchability. Next year (1886) the second Session of the Congress was held in Calcutta and the organisation was found divided on this reform. Dadabhai Naoroji, the President of the Session, opposing the idea of social reform being made a part of the activities of the organisation, said:

> there are the Mohammadans and Christians of various denominations, Parsis, Sikhs, Brahmins and what not—men indeed of each and all those numerous *classes* which constitute in the aggregate the people of India. How can this gatering of all *classes* discuss the social reforms needed in each individual *class ?*

In the 1887 Session Badruddin Tyabji who presided over the third session of the Congress, in his presidential address, refers to Hindus, Muslims and Parsis and describes them as *classes.* With a gap of long period, the matter was referred to the 1892 Session, and its President W. C. Bannerjee gave expression to his sentiments that "things of social reform ought to be left to the individuals of a community who belong to the same social organisation to do what they can for its improvements". By 1895 the Congress became a purely political body. All of a sudden in 1917 the Congress passed a resolution that:

> This Congress urges upon the people of India the necessity, justice and righteousness of removing all disabilities imposed by custom upon the *Depressed Classes,* the disabilities being of a most vexatious and oppressive character, subjecting those *classes* to considerable hardship and inconvenience.[1]

2. Sometime before 1917 there was some guessing in the minds of the Indian people that the policy on the Constitutional structure of India would be changed. Many communal organisations cropped up in India, particularly in Madras and Bombay Presidencies. The

untouchable castes formed *Depressed Classes* Associations or Leagues. As expected by them, Montague announced the policy of His Majesty's Government " of gradual development of self-governing institutions with a view to progressive realisation of responsible Government in India as an integral part of British Empire ". This gave rise for the claim of *communal* representations.

3. The origin of the expression *backward classes* or *depressed classes* can also be traced to the official and constitutional documents. Between 1915 and 1919 various reforms were intended. In pursuance of the declared policy of His Majesty's Government made by Montague, the then Secretary of State for India, a number of committees were constituted to study the problems of India and to introduce amendments to the Government of India Act, 1915. Of them, the Franchise Committee was one. Its Chairman was one Lord Southborough. A joint Report of His Excellency the Governor-General in Council and the Secretary of State was sent to the said Franchise Committee. The terms of reference consisted of the question of granting franchise to the *backward classes* by *communal electorate* and to secure adequate representation of those communities. On 22nd February 1919 the Southborough Committee submitted its report recommending for the representation of the *Depressed Classes* by nomination of the members of that class. Lord Chelmsford Committee, to whom the Franchise Committee Report was sent, made recommendation to the Secretary of State prescribing certain number of seats to be reserved for members of the *Depressed Classes*. Thereafter on the question of suffrage, Major Hills, M.P., moving an amendment in the Imperial Parliament said regarding the *Depressed Classes :*

> We have enfranchised the lower castes--surely what we have done in enfranchising the men of the lower castes is a far bigger shock to the conservative opinion in India than the enfranchisement of women of their own caste.[2]

4. In consonance with the declared policy and also the recommendations made by the Franchise Committee the Government of India Bill, 1919, was prepared. The Bill was sent to the Joint Select Committee of the House of Lords and the House of Commons for their consideration and report. The said Joint Committee, not only accepted the recommendation of the Franchise Committee but further suggested for a larger share of representations for the *Depressed Classes,* both in the Council and in Civil Services. The Joint Committee attached "much importance, however, to the educational advancement of the *depressed* and *backward classes",* and trusted that this ' subject will receive special attention from Ministers'.

With the said object of securing increased association of Indians in every branch of administration the Government of India Act, 1919, came to be passed. Draft Rules under the Act were also prepared.

A Select Committee was appointed to join with the Committee of House of Commons that was constituted to revise the Draft Rules. The Select Committee on the Draft Rules introduced certain changes enabling the Government to pave the way for election proper by educating *backward communities* in the advantages and responsibilities it involved.

5. With the said declared policy, with the passing of the 1919 Act and with the framing of the Rules under the Act, the Instrument of Instructions to Governors came to be issued by His Majesty the King and Emperor of India " directing and enjoining " the Governor of a Province in the following terms :

> You shall do all that is in your power to .... promote all measures making for the moral, social and industrial welfare of the people, and tending to fit all *classes* of population without distinction to take their due share in the public life and Government of the country. But in addition to the general responsibilities with which you are, whether by statute or under this instrument, charged, we do hereby specially require and charge you to take care that due provision shall be made for the advancement and *social welfare of those classes,* amongst the people committed to your charge, who, whether on account of their *smallness of their number or their lack of educational or material advantage* or from any other cause, specially rely upon our protection and cannot as yet fully rely for their welfare upon joint political action, and that such *classes* shall not suffer, or have cause to fear, neglect or oppression.[3]

In pursuance of the said directions Provincial Governments prepared lists of *backward classes* with three parts. In the first part, castes, tribes and their groups were described as *Depressed Classes,* in the second part, certain tribes and racial communities were described as *Aboriginal Tribes* and in the third part, certain other castes, tribes and groups were styled as *Other Backward Communities.*

6. The meaning of the words *Backward* and *Depressed Classes* always goes with the idea of *communal* reservation, and they were groups associated with their religion, race or caste. As far back as 1892 communal representations were recognised. By the Indian Council Act of 1892 a process of election to the Legislatures in India had already been introduced, and according to the Rules framed under the said Act certain specified *communities* in Madras and Assam were represented by nomination on the Governor's Councils.[4]

7. During the Commission days in 1874 and during 1895, probably for the first time in the whole of India, the then Ruler of the Princely State of Mysore, for the purpose of removing inequalities of representation of certain *communities* in the State Services issued strict instructions that reservation of posts should be earmarked for all

communities, except the Brahmin caste who had a practical monopoly of the entire services[5].

Inspite of such reservations the position did not change. Hence "in 1918, the Government of His Highness the Maharaja of Mysore observed that there was a large preponderance of Brahmins in the Public Services and that steps should be taken to ensure that all the other *important communities* in the State are also *adequately* represented in the services of the State. For this purpose, the Government appointed a Committee in August 1918 under the Chairmanship of Sir Leslie C. Miller, Kt., Chief Justice, to investigate and report on the problem. The question, among others, referred to the Committee was the following:

> (ii) Special facilities to encourage higher and professional education among the members of *backward classes*.[6]

After the receipt of the Report, the Government passed a Resolution providing educational facilities to special *communities* who were described as *Backward Classes*[7]. Every *community*, except the Brahmin, European and Anglo-Indian communities, was included in the *Backward Classes* list. This position continued till the Reorganisation of the State in November 1956.

8. Every Province and every Princely State made special provision in the matter of grant of educational facilities and reservation of posts in Government Services in favour of certain communities and castes. Indian Christians, Anglo-Indians, Europeans, Muslims and Depressed Classes had additional facilities in the political field. In pursuance of the directions contained in the Instrument of Instructions all the Governments prepared lists of *Backward Classes*. The word *class*, besides being used in official and non-official documents, was also being used by political leaders, social reformers and the like, to apply to castes, tribes and communal groups.

9. In 1931 when Ambedkar attended the Round Table Conference he demanded separate electorate for the *Depressed Classes* (whom Mahatma Gandhi called Harijans). A Commission in that behalf was appointed under the Chairmanship of Ramsay MacDonald. Ramsay MacDonald submitted his Award in 1932 giving separate electorate for the *Depressed Classes*. But Mahatma Gandhi threatened to "fast unto death". What Gandhiji objected to was not the reservation of seats for those *Classes* on *communal* grounds, but creation of separate electorate. At the Round Table Conference held in 1931 Ambedkar had proposed separate electorate for the *Depressed Classes* and it was at the instance of the Round Table Conference MacDonald recommended for the separate electorate After prolonged discussion and intervention by Rabindranath Tagore, Tej Bahadur Sapru, Jayakar, C. Rajagopalachari, Rajendra Prasad and Birla the compromise at Poona was arrived at. When the news

of the Poona Pact was conveyed to Pandit Jawaharlal Nehru he sent a telegram to Gandhiji stating that " no sacrifice was too great for suppressed down-trodden classes ....." All those leaders called certain castes and tribes as *classes*[8].

10. In 1903 a voluntary non-political and non-sectarian organisation called the Bombay Social Reform Association came to be founded by N. G. Chandavarkar. The objects of the Association, among others, are to remove the disabilities which retard the full development of men and women on the ground of caste ; to promote measures for the elimination of castes and sub-castes etc. Ever since 1903 it has been rendering yeoman service to the society, and various bills on social reform were sent to the Government for consideration. They included (1) The Hindu Inter-caste marriage Bill 1919 and 1936 ; (2) Removal of Social Disabilities Bill 1936 ; (3) Depressed Classes Protection Bill 1934 ; and various other Bills on the codification of Hindu Law.

Great social workers, eminent lawyers, judges of the High Court and distinguished personalities of all walks of life have been its Presidents, Vice-Presidents, Secretaries and Members. During 1955-57 Justice P. B. Gajendragadkar of the Bombay High Court (as he then was) was its President. The Council of the Association during the said period considered an important question, and it related to the caste system in the Hindu community. It stated " the evil of the caste system is generally admitted. Nevertheless it has persisted, and seems to have accentuated. The ruling authorities occasionally expatiated on the evils of what was called *casteism,* but no practical measures were devised for suppressing it ".[9]

11. Another voluntary organisation was founded in 1924, and the objects of the Association (Bahiskrit Hitakarini Sangha, Bombay) were to promote the spread of education and culture among the *depressed classes* etc. Its President was C. H. Setalwad, LL.D. and its Vice-Presidents were Meyer Nissim, Solicitor Rustomji, G. K. Nariman, R. P. Paranjape, V. P. Chavan and B. G. Kher. The Chairman of the Managing Committee was Ambedkar.[10] These voluntary organisations also used the expression *classes* denoting *castes, tribes* and their parts and groups.

Castes, sub-castes, tribes, tribal communities and their groups which were known unofficially before 1919 as *depressed classes* and *backward classes* came to be officially recognised as such classes (Depressed Classes, Aboriginal Tribes and other Backward Communities) after the passing of Government of India Act, 1919. And the said expressions were used till 1935 when in that year the Government of India Act defined those *classes,* as *Scheduled Castes* and *other Backward Tribes.* The Government of India Act, 1935, in its First and Fifth Schedules, defines the two groups as under :

'The Scheduled Castes' means such castes, races or tribes or parts or groups within castes, races, tribes, parts or groups which appear to the Governor-General to correspond to the *classes of persons* formerly known as the *depressed classes* as the Governor-General may by order specify.

'Backward Tribes' means such tribes as the Governor-General may from time to time by order declare to be tribes to which a special system of representation is more appropriate.

12. The Indian Provisional Constitution (Second Amendment) Order, 1947, issued under the Indian Independence Act, 1947, adopted the said definitions of the Scheduled Castes and Backward Tribes. Hence,

A *class* of persons corresponds to a *caste*.

A *class* of persons corresponds to a *sub-caste*.

A *class* of persons corresponds to a *tribe*.

A *class* of persons corresponds to a *race*.

A *class* of persons corresponds to a part or group of a *tribe*.

A *class* of persons corresponds to a part or group of a *race*.

Earlier, on 13th December 1946, while introducing the Objectives Resolution of the Constituent Assembly, Prime Minister Jawaharlal Nehru declared that

This Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic to draw up for her future governance a Constitution .....

WHEREIN adequate safeguards shall be provided for *minorities*, backward and tribal areas and *depressed* and other *backward classes*.

13. Therefore, when Prime Minister Nehru held out assurance to *depressed classes* and *other backward classes* he meant *classes of persons* forming castes, tribes and their parts or groups, as defined in the Constitution, the statutory enactments in force, and as understood by eminent personalities.

14. Under Articles 292, 293 and 294 of the Draft Constitution, 1948, as was assured by Prime Minister Nehru, seats in the Parliament and State Legislatures were reserved for the Muslim and Indian Christian communities on the ground that they were religious *minorities*. When the Indian Christian community voluntarily represented that they did not want any reservation, but would be content if fundamental rights were given to them in respect of religious faith, distinct language and culture, the same were accordingly granted. Thereafter, the Muslim community followed suit. What remained to be provided for in the Constitution was the

safeguard to those *classes* who were *depressed,* and to those *classes* who were *backward.*

15. Ambedkar, the chief architect of our Constitution, in his preface to the book entitled *What Gandhi and Congress have done to the Untouchables,* explains the meaning of the expressions *depressed classes* and *servile classes* :

> One last word. The reader will find that I have used quite promiscuously in the course of this book a variety of nomenclatures, such as *depressed classes,* Scheduled Castes, Harijans and *servile classes,* to designate the untouchables. I am aware that this is likely to cause confusion especially for those who are not familiar with conditions in India. Nothing could have pleased me better than to have used one uniform nomenclature. The fault is not altogether mine.
>
> All those names have been used officially and unofficially at one time or other for the untouchables. The term under the Government of India Act is *Scheduled Castes.* But that came into use after 1935. Before that they were called Harijans by Mr. Gandhi and *Depressed Classes* by Government. In a flowing situation like that it is not possible to fix upon one name which may be correct designation at one stage and incorrect at another. The reader will overcome all difficulties if he will remember that these terms are synonymous and represent the same *class.*

In every part of his works Ambedkar uses the word *classes* as synonymous with certain castes. He also makes reference to the speeches of great Indian leaders like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Annie Besant, G. A. Nateshan, Bhulabhai Desai, Rama Iyer, Asaf Ali, Justice M. G. Ranade, to resolutions and correspondence of the Congress organisation, to Government communications, to press reports and editorials, to reports of various committees and the like where one finds that the expression *classes* was used as synonym for castes and communities.

16. The expression classes of citizens occurring in Arts. 15, 16, 29, 338 and 340 also occurred in *pari materia* in the Indian Penal Code and the Press (Emergency Powers) Act, 1931. The term *classes* of *citizens* was substituted in Section 153A of the Indian Penal Code in 1950 after the coming into force of the Constitution for the earlier expression *classes of His Majesty's Subjects.* Section 153A was inserted in the Code in 1898. At least two of our High Courts have given meaning to the word *class.*

For ascertaining the ordinary signification of the term " Class of His Majesty's Subjects" a *Full Bench* of the Lahore High Court[11] held that ordinary dictionaries are somewhat delusive guides in the construction of statutory terms. Their Lordships held that

> A *class or section* of His Majesty's Subjects is a set of persons all filling one common character and possessing common and exclusive characteristics which may be associated with their *origin, race,* or *religion.* The term *class* carries with it the idea of a readily ascertainable group having some element of permanence, stability and sufficiently numerous and wide-spread to be designated a class. It is in this sense that the expression was commonly understood in this country and it is in this sense that ought, in my opinion, be construed.

This High Court relied on the ruling of the Bombay High Court [12] wherein it had held that the expression *classes of His Majesty's Subjects* (substituted in 1950 by the term *classes of citizens*) in Section 153A of the Penal Code

> is used in a restrictive sense as denoting a collection of individuals or group bearing a common and exclusive characteristic which may be associated with their *origin, race* or *religion,* and that the term *class* within that section carries with it the idea of numerical strength so large as could be grouped in a single homogeneous community. It is true that in the development of citizenship a sharp distinction has arisen between one group of citizens and another based on purely materialistic or economic conceptions. For instance, the functional group, according to the economic theory, would be capable of being sub-divided into numerous small groups each described as a class in itself. The functional group might include the priestly class, the worker and the artisan class. Society could also be grouped according to the economic theory into the propertied class, the capitalist class like the sawkars and the rentier class who live on the income of the property, and the labour class. That was not, in my opinion, what was contemplated by the framers of Section 153A of the Code. None of these groups can claim both exclusive and common characteristics which could be readily ascertained, and which, I think, constitute the essential quality of the *class* mentioned in Section 153A I.P.C.

It was held in that case that groups like agriculturists, land-lords, money lenders, lawyers did not constitute *classes.* And it was further held that racial groupings of society such as Mahars, Chambhars, Chandalas, and the like or sectarian divisions like the Brahmins, Lingayats, etc., were *classes.* Hence the classes of citizens are groups of people associated with their *religion, race* or *caste.* Backwardness, social and educational, should be of the religious denomination, sect, caste or tribe.

17. It is noticed earlier that clause 4 of Art. 15 was not there in the Constitution when it was passed, but it came to be inserted by the Parliament in the year 1951 by the First Constitution

Amendment Act. In the Fundamental Rights Chapter the only Article that contained the expression "backward class" was Art. 16(4). The Constituent Assembly appointed a Drafting Committee under the Chairmanship of B. R. Ambedkar and in the original draft of the Constitution only the expression "class of citizens" was used. But, on account of the opinion expressed by the Drafting Committee the expression "class of citizens" was substituted by the expression "backward class of citizens". Clause 3 of Art. 10 of the Draft Constitution corresponds to Art. 16(4) of the present Constitution as passed by the Constituent Assembly. Some discussion was raised in the Constituent Assembly at the stage of final voting on the said Article 10(3) of the Draft Constitution, and Ambedkar had to explain the exact import, the significance and the necessity for using the word 'backward' in the said clause 3 of Art. 10.

> Now, Sir, to come to the other question which has been agitating the members of this House, *viz.*, the use of the word "backward" in clause (3) of Article 10, I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word "backward" in this particular clause. If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and *there ought to be no limitation,* there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this principle is to be operative, in their judgment, to its fullest extent there ought to be *no reservations* of any sort *for any class or community* at all, that all citizens if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain *communities* which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a

proper look-in, so to say, into the administration. If honourable members will bear these facts in mind- the three principles we had to reconcil- they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of article 10 of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain *communities* that the administration which has now—for historical reasons—been *controlled by one or a few communities,* that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those *communities* who have not been so far employed in the public services to the *fullest* extent, what would really happen is, we shall be completely destroying the first proposition upon which we are agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a *community* or a collection of communities, the total of which came to something like 70 per cent of the total posts under the State and only 30 per cent are retained as the unreserved. Could anybody say that the reservation of 30 per cent as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgement. Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If honourable members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the same time, *satisfy the demand of communities which have not had, so far, representation in the State,* then, I am sure they will agree that unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word 'backward' which, I admit, did not originally find a place in the Fundamental Right in the way in which it was passed by this Assembly. But I think honourable members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I

think this is sufficient to justify why the word 'backward' has been used.

With regard to the *minorities,* there is a special reference to that in Article 296, where it has been laid down that some provision will be made with regard to the *minorities.* Of course, we did not lay down any proportion. That is quite clear from the section itself, *but we have not altogether omitted the minorities from consideration.* Somebody asked me : " What is a backward community " ? Well, I think any one who reads the language of the draft itself will find that we have left it to be determined by each local Government. *A backward community is a community which is backward in the opinion of the Government.* My honourable friend Mr. T. T. Krishnamachari asked me whether the rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter. *If the local Government included in this category of reservations such a large number of seats, I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Goveenment has acted in a reasonable and prudent manner.* Mr. Krishnamachari asked : " Who is a reasonable man and who is a prudent man " ? These are matters of litigation, but my honourable friend, Mr. Krishnamachari will understand that the words " reasonable persons and prudent persons " have been used in very many laws and if he will refer only to the Transfer of Property Act, he will find that in very many cases the words " a reasonable person and a prudent person " have very well been defined and the Court will not find any difficulty in defining it. I hope, therefore that the amendments which I have accepted, will be accepted by the House.[13]

The explanation given by Ambedkar was accepted by the Constituent Assembly, and Art. 10(3) was passed in the present form of Art. 16(4). From the said explanation the following things emerge :

(1) There shall be equality of opportunity in the matter of appointment to posts under the State services.

(2) If the said principle of equality of opportunity is to have its full operation there ought to be no reservation in favour of any *class or community* at all. The introduction of clause 3 in Art. 10 was intended that although theoretically it was good to have the principle that there should be equality of opportunity, there must, at the same time, be a provision made for the entry of certain *communities which so far had been outside the administration.*

(3) There should be a reconciliation between the principle of equality of opportunity and *reservation* in favour of certain

communities. Reservation in favour of certain communities should not exceed 50 per cent of the total number of posts, besides reservation that could be made for minorities like Muslims and Christians under Art. 296.

(4) A *backward community* means a community which in the opinion of the Government is backward.

(5) Total absence of reservation and excessive reservation of posts under the services in favour of backward communities under Art. 10(3) of the Draft Constitution are justiciable.

(6) The expressions *class* and *community* used by Ambedkar in his speech on Art. 10(3) of the Draft Constitution are referrable to castes and tribes. That this is so is evident from the language used by Ambedkar in Articles 292, 293, 294, 295, 296 and 297 of the Draft Constitution, wherein the Scheduled Castes are referred to as a community, the Scheduled Tribes are referred to as a community, the Muslims are referred to as a community, the Indian Christians are referred to as a community and the Anglo-Indians are referred to as a community.

(7) Since separate provision had been made in Art. 296 (Draft), religious minorities did not come within the meaning of *backward class* and reservation for religious minorities could be in addition to the reservation made for backward classes.

Hence, the *classes of citizens* are groups of people associated with their *race* or *caste.* Backwardness, *social* and *educational,* should be of the religious denomination, caste or tribe.

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2. Summary from—
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   (ii) *Indian Constitutional Documents* 1775—1939 Vol. III by A. C. Banerjee.
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CHAPTER X

COURT DECISIONS AND CONSTITUTION AMENDMENT

1. The Constitution of India was enacted on 26th November 1949. Some of the provisions came into force from that day, and the remaining provisions from 26th January 1950 (Art. 394).

Article 29(2) speaks of non-discrimination on the ground of religion, race, caste, language or any of them in the matter of admission of students to educational institutions maintained or aided by the State. Similarly, Article 15(1) and (2) prohibit discrimination, particularly in regard to access to shops, public restaurants, public places of entertainment etc., on the ground of religion, race, caste, sex, place of birth or any of them. When the Constitution came into force Articles 15 and 29 did not contain the exception clause similar to clause (4) of Article 16. The practice that was in vogue in Madras, probably in most of the States, was the allotment of all the available seats to different communities and castes in fixed proportion. The Madras Government continued the same practice even after the coming into force of the Constitution. The Government Order known as Communal G.O. allotted all the available seats in this way :

Out of a total of 14 seats—
6 to non-Brahmin Hindus,
2 to Backward Hindu communities,
2 to Brahmins,
2 to Harijans,
1 to Anglo-Indian and Indian Chiristian communities and
1 to Muslim community.

2. It is evident that every seat was to be filled in fixed proportion strictly on *communal* grounds. The constitutional validity of this G.O. was questioned in the Madras High Court[1]. The ground of attack was that Article 15 and 29(2) prohibited discrimination on the ground of *religion, race* and *caste* and that it was not permissible to make selection on *communal* grounds. Their Lordships found that while there is a provision in Article 16(4) to make reservation of posts on *communal* grounds in favour of *backward classes*, no such provision was to be found either in Article 15 or in Article 29(2). The learned Advocate-General drew a vivid picture of the injustice which would result if no discrimination were made between, say, Brahmins and Harijans. If the marks standard were to be applied uniformly, the result would be, he stated, that while 249 Brahmin candidates would secure admission, no Harijan and only three

Muslims would be selected. In the same case Justice Viswanatha Shastri said " If the rule of allotment of seats according to castes and communities had been ignored, the selection of candidates had been made on the basis of merit, that is to say, the marks obtained by the candidates in the qualifying examination, irrespective of their castes, community or religion, 249 Brahmins, 112 Non-Brahmin Hindus, 22 Christians, 3 Muslims and no *Harijan* would have been selected ". Looking to the figures given by the Chief Justice Rajamannar and Justice Viswanatha Shastri, it is clear that no candidate of the *Backward Hindu communities* would have got seat, and so too the *Harijan* students. However, since Article 15 and 29 did not contain any provision to reserve seats on grounds of religion, race and caste the selection made in terms of the *communal* G. O. was held unconstitutional.

3. The matter was taken by the Madras Government in appeal to the Supreme Court. The Supreme Court said[2] " Seeing, however, that clause (4) was inserted in Article 16, the omission of such an express provision from Article 29 cannot but be regarded as significant. It may well be that the intention of the Constitution makers was not to introduce at all *communal* considerations in matters of admission into any educational institution maintained by the State or receiving aid out of State funds. The protection of backward classes of citizens may require appointment of members of backward classes in State services and the reason why power has been given to the State to provide for reservation of such appointments for backward classes may under those circumstances be understood. That consideration, however, was not obviously considered necessary in the case of admission into an educational institution and that may well be the reason for the omission from Article 29 of a clause similar to Clause (4) of Article 16 ".

The appeal was dismissed.

How could the *Backward Classes* claim benefit under Article 16(4) on grounds of their *religion, race* or *caste* if they are not educated ? Soon an Amendment was introduced in the Parliament. Prime Minister Nehru moved the Resolution for amendment.

4. Referring to the decision of the Madras High Court quashing the *communal* G.O. (In *Champakam Dorerajan* case) the Prime Minister said that " according to which (Communal G.O.) certain reservations were made for certain *classes* and *communities*. The High Court of Madras said this Government Order was not in order, that it was against both the spirit and letter of the Constitution ". He proceeded to say that " their argument was quite sound and perfectly valid, that is to say if *communities* as such are brought into the picture, it does go against certain explicit or implied provisions of the Constitution. Nevertheless, while it is quite valid and we bow to

the decision of the High Court of Madras in this matter the fact remains that we are faced with a situation for which the present generation is not to blame. Therefore, some sort of special provision must be made. We have to do something for the *communities* which are backward educationally, economically and in other respects, if we wish to encourage them in these matters. We come up against the difficulty that, on the one hand, in our Directive Principles of Policy we talk of removing the inequalities, of raising the people in every way socially, educationally and economically, of reducing the distance which separates the *groups* or *classes* of individuals from one another, on the other hand we find ourselves handicapped in this task by certain provisions in the Constitution ".

5. While dealing with some of the directive principles and ideals he goes on to say " hence, we must find a middle way between our objectives and the existing facts. We must keep our ideal in view and then take steps which will gradually carry us in that direction. At the same time, *we must not ignore the existing facts.* We have to deal with the existing facts anyhow, even if it means fighting the existing situation ".

6. The Select Committee had unanimously recommended for the amendment of Article 15 and 29 (for insertion of clause 4) but it had expressed its fears and apprehensions that the provision was likely to be misused by the Government for perpetuating any class discrimination or *treating non-backward classes as backward* for the purpose of conferring privileges on them. Then, the Prime Minister expressed " *We earnestly hope that if and when this provision is passed, it will not be misused. Nobody can give a guarantee against its misuse. We can only try our best to create the conditions where such misuse may not be made. What I wish to assure this House about is this, that we are alive to the possibility that this Article may be used for a purpose to which we are opposed. May I add that when we talked with certain members, including the Chief Minister of Madras, they told us that they realised and appreciated our difficulty and assured us that they had no desire to use it in any objectionable way.* Hence I would commend this particular amendment of Article 15 to the House ".[3] Ambedkar defended the said amendment.[4]

7. That the introduction of the expression 'Backward Classes' in Article 15(4) and Article 29 (by virtue of Clause 4 of Article 15) by the First Amendment to the Constitution came to be made indicating groups of people associated with their religion, race or caste was as a direct consequence of the observations made by the Madras High Court and the Supreme Court referred to above, wherein their Lordships held that Article 15 and 29 (as they stood before Amendment) did not provide for reservation of seats in educational institutions on grounds of *religion, race* or *caste.* Though in the course of the arguments at the Bar, rulings of the

Supreme Court of America were cited, their Lordships rightly held that the expression 'backward class' occurring in Article 16(4) was not to be found in any of the Constitutions of the world and that the meaning to the expression Backward Classes be given on the bare construction or interpretation of the provisions of the Indian Constitution. Their Lordships said that while there is a provision under clause (4) of Article 16 to make reservation in favour of Backward Classes on grounds of their *religion, race* and *caste,* there was no such expression found in Article 15 or in Article 29 so as to enable the State to make reservation on grounds of *religion, race* or *caste.*

This is how religious, racial and caste considerations came to be introduced in Article 29 in the matter of admission to educational institutions.

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1. A.I.R. 1951 Madras 120 F.B.

2. A.I.R. 1951 S.C. 226.

3. Speech of Prime Minister Jawaharlal Nehru in moving the resolution for the Constitution First Amendment Bill made in Parliament on 29th May 1951.

4. *Life and Mission of Dr. Ambedkar* by Dhananjay Keer—Page 427.

The 'Caste' of a Caste:

8. India is a land of many religions. Hindus alone do not constitute the Indian society. There are the Mohammadans, Christians, Zoroastrians and some others There are others who abandoning their religion formed new ones. And strangely, a part of the Indian society does not belong to any known religion. Some embraced either Islam or Christianity. Some having embraced a new religion reverted to their original religion. Indian society, therefore, consists of the following religious communities:

Hindus with their four broad classes (with innumerable castes and sub-castes in each class. It is said there are about 4,000 castes and sub-castes) and denominations of Buddhist, Jain, Sikh, Lingayat; and of Brahmo Samaj, Arya Samaj, Prarthana Samaj and Kabir Panth. (The Buddhists, Jains, Sikhs and Lingayats, though they form separate religions, are deemed to be Hindus. There are again sects amongst each of the said religions. For instance, amongst the Jains some of the sects are: Chaturtha, Pancham, Digambar, Swetamber, Bogar, Gujjar, Marwadi, Sthanikawasi, Panchal, etc. Amongst Lingayats also there are sects. Of them Aradhya, Banajiga, Panchacharya, Sada and Nonaba are the major ones);

Muslims with Sunni and Shia classes (and their sections and subsections like Khoja, Cuchi Menon, Hanafi, Maliki, Shafai, Zaidya, Akhabari, Ullu and others. Some low caste Hindu converts to Islam have retained their original identity. Besides them, there are other sections in Karnataka like Mapilla, Pinjari, Chapparband, Laddaf, Kasab (Kasai), Katharga, Dudekula, Labbe, Pindare etc.)[1];

Christians with Catholic and Protestant classes (and the groups amongst the recent converts to Christianity from low castes)[2];

and

other religious communities;

races with their distinct tribal or racial community belonging to any religion and some not belonging to any known religion;

and people of peculiar *descent* like the Anglo-Indian community.

9. The caste system peculiar to Hindu religion is unknown to other religions, even to Buddhism, Jainism and Lingayatism (Virashaivism). But on account of the impact of Hinduism on Islam, Christianity, Buddhism, Jainism and Virashaivism there are certain sections among them also. The mischief that the Hindu caste system does on others may be stated in brief in the words of Ketkar thus:

> .....As long as *caste* in India does exist, Hindus will hardly inter-marry or have any social intercourse with outsiders;

Karnataka State Archives,
(Departmental Library)
ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರಾಗಾರ
(ಇಲಾಖಾ ಗ್ರಂಥಾಲಯ)
ಪುಸ್ತಕ ಸ್ವೀಕೃತಿ ಸಂಖ್ಯೆ
ದಿನಾಂಕ
3899

and if Hindus migrate to other regions on earth, Indian *caste* would become a world problem.[3]

Nevertheless, the *principle of caste* is confined to Hinduism only. That is to say the belief in the division of people into *castes* is peculiar only to Brahminism. No other religion in the world believes in such divisions.[4] The two main ideas that unite Hindu religious thought are the theory of *reincarnation* and *the principle of caste.*[5]

10. What does this *principle of caste* mean?

In India the topic on caste is an eternal one. So much thought has been bestowed upon it and so much has been written about it that nothing new can be said. But when we are writing about the *caste* of a caste this may appear somewhat new. The whole of the judgment of the Supreme Court in Balaji Case[6] makes distinction between the *caste* and a caste.

11. The Hindu who observes *caste* does so because his religion wants him to[7]. Caste is a complex social institution unique by itself. Caste cannot be defined with any rigidity. It can be felt and experienced by those who are Hindus. Many attempts have been made to define it but each of those definitions is incomplete. Broadly speaking, a caste is a group of persons all claiming common ancestry, community of faiths and superstitious beliefs, the devotion to a particular deity, and above all marrying within the group. Each caste has its own characteristics, some being antagonistic to those of other castes. The customs and practices of castes, particularly in the matter of marriage, are so very rigid that a broader outlook is condemned. The institution of marriage has played an all important role in the continuance of these divisions. The worst legacy of this is the child acquiring the *status* and caste of its parents.

12. The word caste could be used in two senses, one in the concrete and the other in the abstract. In the concrete sense 'a caste' means a group of persons or families. In the abstract sense the *caste* means status or rank or position it occupies. The Hindu society consists of *graded* groups. Every caste knows its *status* in the hierarchy of castes. It is either below or above some. The Harijans or the Panchamas occupied the lowest rung in the social ladder. (In a sense they were not given any *status* at all). Because of the lowest *status,* they were not even touched by the *caste*-Hindus. They were subjected to all forms of exploitation and social injustice. I refrain from writing on caste, for the topic is not material at this juncture. A few of the disabilities certain castes have been subjected to are intended to be removed by the Untouchability (Offences) Act, 1955. The social backwardness with those castes was due to the social disabilities imposed on them. The disabilities were imposed because of their *caste,* that is to say, low *status.*

13. In the present context of our society and the constitutional provisions caste-compartments are bound to continue. Constitution by Art. 17 abolishes 'Untouchability'. But it does not abolish the caste-groups. When the Indian mind is yet conservative and when there are no provisions in the Constitution for the removal of caste-groups there can be no legislation in that behalf, and Hindus are bound to maintain the caste-groups. The Directive Principles of State Policy are intended for taking certain measures such as prohibiting consumption of alcohol, providing for free and compulsory education, removing English as the medium of instruction, organising village panchayats, etc. But there is no policy for the eradication of castes. As the Preamble goes, the people of India in giving to themselves the Constitution in the present form did not think that abolition of caste-compartments was a function of the State. This omission in the Constitution is one that makes our country a secular democratic welfare State. What the constitution intends doing is the abolition of differences in *status* on the ground of caste, and removal of disabilities that are attended with low *status*. The hitherto known belief that some castes are above and some below is intended to be done away with. The division of society into various groups in the graded order should go. But the divisions could be on equal footing or *status*. This is exactly what Mahatma Gandhi said about the removal of castes.

He said :

> I have frequently said that I do not believe in *caste* in the modern sense. It is an excrescence and a hardship on progress. Assumption of *superiority* by any person over any other is a personal sin against God and man. The *caste*, in so far as it *connotes distinctions in statuses*, is an evil.[8]

Bharatan Kumarappa while editing some of the writings of Mahathma Gandhi says that

> Gandhiji here uses the word *caste* in the same sense as *varna*. When he condemns caste he condemns only *the idea of superiority and inferiority* which it came later to acquire and not the principle of following hereditary occupations which he calls *varna*, and of which he thoroughly approves.[9]

Varna is that which describes the position of a person in society ; that which envelopes or covers him.[10]

14. By Oxford Dictionary also we find that the word 'caste' means a 'class' who keep themselves socially distinct, or inherit exclusive privileges. The other meaning is, according to the same dictionary, the *position* it (caste) confers.

"It (*caste*) also fixes the place in society in which one lives it. So long as it is *status* that matters no economic considerations can offset ritual and there is no possibility of change".[11]

Constitution does not abolish the caste system. On the contrary, both Constitution and law help perpetuation of castes. If caste practice is prohibited, as is preached to many by some, can even the most High Priest of a community become the Mathadhipati or a member of the governing body of a different religious institution? Is it not that the Constitution by Art. 16(5) and other Articles recognises the existence, and permits continuance and the creation of such religious, denominational and sectarian institutions in the country? Has the Constitution taken away the jurisdiction of the civil courts under the Civil Procedure Code to decide suits relating to certain matters connected with *caste* ?

Can an accused person escape conviction on the plea that Indian society is casteless, in a charge against him of marrying a girl of different caste by representing to her that he was of her caste ? Has the Civil Court no jurisdiction to decree for the dissolution of marriage on that ground ? Is it not an offence of defamation to call another an *outcaste ?*

15. We read in the journals and the authors ; we hear from the platform and the rostrum ; we are taught in the school and college that ours is a casteless society under the Constitution. We are being told this by so many, so often and so intelligently well that we hardly think of examining the extent of truth of the statement, and questioning it. We are often times led away by the opinion of a person in authority and his knowledge of constitutional law may be too limited to make him any kind of an authority.

16. What the Constitution aims at is the removal of some disabilities and practices imposed on certain castes on the ground of their *status, position* or *rank* in the society. Caste system and structural units of castes are maintained. It says no further. In every conceivable activity of private life castes play an all-important role. There are hundreds of communal hostels and educational institutions owned and managed by certain communities. Some castes and communities have *communal* clubs, associations, co-operatives, banks, etc., where membership and admission is confined to the particular caste or community. How then could our leaders, lawyers, doctors, judges, ministers, legislators and officials go by their respective caste names, if the Constitution has abolished caste ? What is there in the Constitution to prevent a person from making discrimination on the ground *only* of *caste* or *community* in matters relating to marriage, in electing a candidate to political position, in employing a person in one's own trade or business, in permitting entry into a private Math or temple, and what not ?

17. Conscious and deliberate practice of caste for centuries in every walk of life has become a second nature with every individual in the society. No person can be said to be free from the natural impulse of inclination in favour of a person or candidate of his own caste or community. Special provisions in favour of the Backward Classes under the Constitution, therefore, are intended to prevent discriminating them against on the ground of religion, race and caste and to safeguard their interests, *at least in educational and governmental fields,* by those who either on account of their larger number or advancement happen to be at the helm of affairs of the State. The said provisions, no doubt confer privileges on them, because human faculties and talents are not fully developed in those who are subjected to the discriminational treatment and social disabilities. The Backward Classes develop a complex of inferiority, dejection and frustration which retard initiative and progress.

18. Often times, a wrong analogy of the division of the country is given to silence the backward classes. It is true that on communal grounds the country was divided. Muslims are a community by themselves, having a religion, scripture, language, culture, large number, literature, philosophy and everything that is needed to make them a distinct community. It is not an assimilationist community in the Indian society because of the religious and political ambitions. How can their case apply to Hindu Backward Classes whose religion is the religion of the advanced classes, whose language is the language of the advanced classes, whose gods are the gods of the advanced classes, whose scriptures are the scriptures of the advanced classes ? Are they concentrated in any contiguous area in the country as were the Muslims ? Have they any political organisation as the Muslims have ? The fact that the Backward Classes have not resorted to violent agitations against the action of the Mysore Government since 1963 in discontinuing the reservation of seats in educational institutions and Government services, and the grant of financial help to those students shows that they are tolerant and passive. How the 1963 scheme of Mysore Government has worked every one knows. Backward Class students—not one, not ten, but in thousands—discontinued their education, lost seats in the educational institutions and posts in Government Departments. At this juncture we do not wish to give the dismal picture of those classes in economic, political and other fields. That the Constitutional provisions under Art. 15(4), 29(2), read with Art. 15(4) and 16(4) are intended to bring about equality amongst all the castes is evident from Prime Minister Nehru's speech.

> We talk about casteism, and we condemn it as we should. But the fact remains that half a dozen, or may be 10, so-called superior castes dominate the Indian scene among the Hindus. There is no doubt about it. And if I talk about the removal of casteism, don't understand by that that I want to perpetuate the present classification, some at the top the other people at the

bottom If we don't equalise, or tend to equalise undoubtedly casteism will flourish in a most dangerous way.[13]

Hence, with this background of the historical, legal, constitutional and factual material we shall proceed to analyse the judgment of the Supreme Court in Balaji Case.[13]

References—

1. (*a*) Muslim Law, (*b*) Report of the Backward Classes Commission Vol. I page 27, (*c*) Report of the Mysore Backward Classes Committee, Final Report, page 20.

2. Report of the Backward Classes Commission Vol. I—page 27.

3 Dr. Ketkar on Caste—page 4—quoted from *Castes in India, their Mechanism, Genesis and Development*, 1916, by Dr. B. R. Ambedkar.

4. *How the Great Religions began*—page 65 by Joseph Gaer.

5. *Readings from World Religions*, by Selwyn Gurney Champion and Dorothy Short (1959).

6. A.I.R. 1963 S.C. 649.

7. *Caste Today* by Taya Zinkin.

8. 'Caste'—Mahatma Gandhi—Young India (25th March 1933).

9. *My religion*—by M. K. Gandhi (1954) edited by Sri Bharatan Kumarappa.

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11. *Caste to-day* Taya Zinkin.

12. Pandit Nehru in his address to the Congress Parliamentary Party on 2nd November 1954. Backward Classes Commission Report, Vol. I, page 138.

13. A.I.R. 1963 S.C. 649.

CHAPTER XI

CRITERIA FOR CASTES AND TRIBES UNDER ARTICLES 341 and 342

1. In finding out what castes and tribes under Article 341, and what tribal communities and racial groups under Article 342 should be specified by the President (and included in or excluded from by the Parliament later) in the Schedules some criteria are necessary. Both categories are socially and educationally *backward classes.* But the degree of backwardness in those two categories is more than what is in the *other backward classes* contemplated to be specified by the President under Article 338.

2. In the case of Scheduled Castes the majority of the enumerated castes and tribes show that they suffer from the age-old stigma of untouchability. The necessary concomitants of untouchability are the various disabilities in the matter of entry into shops, restaurants, hotels; of carrying on any trade or business; of using any well, tank, stream or river; of entering into any public conveyance; of using any jewellery or finery, and many more disabilities. The Untouchability (Offences) Act, 1955, enumerates the removal of a few of such disabilities imposed on them on the ground of stigma of untouchability attached to those castes.

In the case of Scheduled Tribes the majority of the enumerated tribal communities and racial groups live in jungles and hills isolated from the rest of the society. Because of the disabilities imposed on the Scheduled Castes, and the inaccessible places where the Scheduled Tribes live, they lead a sub-human and primitive life. Their place of habitation is poor and barren. They do not own land, neither any other property. They follow unclean occupations. Education is almost completely extinct. To describe their life in short, they are no better than animals. The backwardness of those *classes* is known to one and all. Since untouchability being peculiar to Hinduism the Schedule under Article 341 specifies only the Hindu and Sikh classes (Castes and Tribes). But in Karnataka a Muslim group called Halalkhor finds a place in the Scheduled Castes list. Whereas, tribals and racial groups belong to more than one religion. Some tribal groups have embraced Christianity or Islam or Buddhism. There are some groups who are Hindus. There are others who do not belong to any known religion. Scheduled Castes (Depressed Classes) also embraced Christianity, Islam, Buddhism and Veerashaivism. Castes, tribes and racial groups who satisfy the criterion of untouchability in them, or residence in inaccessible hills and jungles, may, without the further showing of backwardness, be

scheduled as Castes under Article 341 or Tribes under Article 342, as the case may be. If a caste ceases to be untouchable, it ceases to remain in the Schedule. If a tribal community ceases to reside in tribal areas or the hills and jungles it ceases to remain in the Schedule. But can it be said that all of a sudden they cease to be backward ? A Scheduled Caste might have made some progress, or might have embraced Islam or Christianity, and thereby the disabilities under which it suffered as a result of untouchability might have, to some extent, disappeared. But the fact remains that such castes, tribes and racial groups still continue to suffer under other social, educational and economic handicaps and taboos. When such castes, tribes and racial groups are excluded from the Schedules they lose the political privileges, but does it appeal to logic and conscience to say that they should be deprived of even the educational and social upliftment ? Here comes Article 338(3) to their help. Some castes, tribes and racial groups found place, on the coming into force of the Constitution, in the Presidential Orders. It is a fact that some more castes, tribes and racial groups, were either by oversight or other reason, though deserving, left out. They deserve to be included in the Schedules of the Castes and Tribes by the Parliament. Here too comes Article 338(3) to their help.

There are certain castes and tribes who, though not satisfying the important criterion of untouchability or the residence in hills and jungles, are nomadic and criminal in character. Sociologically they present peculiar characteristics in their origin, tradition, culture and custom. Here again Art. 338(3) comes in the picture. All such castes, tribes, tribal communities and racial groups are akin to Scheduled Castes and Scheduled Tribes. They are half-way to untouchability and semi-inarticulate. The Untouchability (Offences) Act, 1955, presumes untouchability in the case of castes Scheduled in the Presidential Order. The Act conceives of castes, other than those enumerated in the Schedule, who also might be labouring under disabilities on the ground of untouchability. They too live in sub-human condition. In their case also no further criterion is necessary. If any tests are applied, however rigid they might be, they will satisfy those tests. The Backward Classes Commission appointed by the President has specified them by putting star (asterisk) marks against their names (Vol. II).

It is not all. There are certain castes, tribes, groups or communities who suffer from backwardness in lesser degree, and to find them out investigation is needed.

CHAPTER XII

'*CASTE*' CANNOT BE THE SOLE BASIS

1. This is what the Supreme Court said in Balaji case. It further said the test of *caste* cannot be applied uniformly to all sections of the society.

We have seen that there are many religious communities in India with their distinct groups. Amongst Hindus they are termed as castes, tribes or denominations. Amongst other religious communities, they are termed as sections, and also as tribes. Each caste, tribe or section has its own name to be readily identified with the characteristics of a permanent nature. But Hindu caste has an important characteristic, and that is, its *status* or *position* in society. There is no equality of *status* amongst the Hindu castes. Although there are distinct sections amongst other religious communities, all those sections have the same *status* in their respective religious community.

2. As is required by the Constitution, a Commission was appointed by the President of India under Article 340. The terms of reference to the Commission were, among others, to " determine the criteria to be adopted in considering whther any sections of the people in the territory of India (in addition to the Scheduled Castes and Scheduled Tribes specified by notifications issued under Article 341 and 342 of the Constitution) should be treated as socially and educationally backward classes, and, in accordance with such criteria prepare a list of such classes setting out also their *approximate* numbers and their territorial distribution ;

(b) Investigate the conditions of such socially and educationally backward classes and the difficulties under which they labour ; . . . ."

3. When Article 340 and the terms of reference are read together it is evident that besides the *classes* specified by the President under Articles 341 and 342, there are other *classes* also who are socially and educationally backward. Constitution has recognised the factual existence of social classes in the Indian society. The Commission was authorised to determine the criteria, but not to create new *classes*. On 15th June 1953 a questionnaire was prepared by the Commission before they started investigation. That was the first document prepared soon after the Commission was constituted. Unanimously, without a word of objection by any of the members, not even by the Chairman, the questionnaire was issued.

4. According to the Commission the criteria were intended to be applied to Hindu, Muslim and Christian denominations, castes, groups and sections. A religious denomination, group or section may satisfy all or some of the criteria. But can it be said that the tests of *social stigma* and *inferiority of status* require to be applied to non-Hindu denominations, groups and sections ? The tests of *social stigma* and *status* or *position* being unique to Hindu community they were meant to be applied only to Hindu denominations, castes, groups and sections. The *caste* test in its abstract sense means the *status* test. Some voluntary organisations, individuals and State Governments said that the criteria mentioned in the Questionnaire were exhaustive. The Commission started collecting material, visiting different places, hearing people and their representatives. In the course of their tours, Christians and Muslims also came forward with a plea that the idea of *status*—the idea of *high* and *low*—which is unique to Hindu society, had also permeated their communities, and that on that basis also Muslim and Christian sections be treated as socially backward.[1] Constitution intends removing distinctions in *statuses* in Hindu society, but when the test of *caste i.e., status* was to be applied to Hindu groups only, Muslims and Christians demanded that their sections and denominations should also be treated as socially backward on the basis of *status*. This was a rude shock for the Chairman and drove him to the conclusion that the remedies they suggested were worse than the evil the Nation was out to combat.[2] Doubtless the criteria mentioned in the Questionnaire were exhaustive. Each criterion should have been applied to a particular caste, denomination, group or section but not the criterion of *status* to Christian and Muslim sections and denominations. The Commission did exactly the opposite. It applied the *caste i.e.,* the *status* test *only,* not only to Hindu but also to Muslim and Christian sections. This is what the Commission says :

> We tried to avoid *caste* but we found it difficult to ignore *caste* in the prevailing conditions. We wish it were easy to dissociate *caste* from *social* backwardness at the present juncture. In modern times anybody can take to any profession. The Brahmin taking to tailoring does not become a tailor by *caste*. Nor is his *social status* lowered as a Brahmin. A Brahman may be a seller of boots and shoes, and yet his *social status* is not lowered thereby. Social backwardness, therefore, is not today due to the particular profession of a person, but we cannot escape *caste* in considering the *social* backwardness in India.
>
> We think the Commission is justified in interpreting the terms of reference as mainly relating to social *hierarchy* based on *caste*.
>
> We repeat that the interpretation put upon the terms of reference by the Commission is not only correct but inevitable and no other interpretation is possible.

5. The Commission applied the *caste* (status) test to Hindu castes. What did it do in the case of Muslim and Christian denominations and sections ? To them also it applied the *caste* test.

The Commission says :

> The Muslim rulers had to accept *caste* as a social distinction. The Christians too found *caste* very powerful. In the extreme South they still recognise *social* and *religious* distinction between *caste*-Christians and *untouchable* Christians. Some Christian missionaries in Maharashtra and other places discovered that inter-caste marriages amongst Christians often times led to unhappy results. Christians of Goa still consult *caste* and *gotra* in the minutest details when arranging marriages amongst themselves.

In regard to educational backwardness (of castes, sections and denominations) the Commission said that it was due to the following circumstances :

1. Traditional apathy for education on account of social and environmental conditions or occupational handicaps.
2. Poverty and lack of means of a large number of communities to educate their children.
3. Lack of educational institutions in the rural areas.
4. Living in inaccessible areas and lack of proper communications.
5. Lack of adequate educational aids in the form of freeships, scholarships and monetary grants for the purchase of books and clothing.
6. Lack of residential hostel facilities in places where educational institutions are situated.
7. Unemployment among the educated acting as a damper on the desire of some of the communities to educate their children.
8. Defective educational system which does not train students for appropriate occupations and professions.

6. The Commission has also stated that the educational backwardness was largely due to social backwardness. The Commission discarded all other criteria and proceeded to enumerate the castes, tribes and communities as backward on the following criteria :

> After a consideration of *social* conditions in Indian society and the causes for the backwardness of a large section of the people we adopt the following criteria for general guidance :—
>
> 1. Low *social position* in the traditional *caste hierarchy* of Hindu society.
> 2. Lack of general educational advancement among the major section of a caste or community.

3. Inadequate or no representation in Government service.

4. Inadequate representation in the field of trade, commerce and industry.

Applying the test of caste (i.e., *status*), the Commission enumerated certain sections and castes and tribes as backward in its Report (Vol. II). When the Commission took the decision of treating castes and communities as backward or forward on the basis of their *status*, it appears, some well wishers of the country warned the Commission that investigations into *castes (statuses)* may encourage people to be *caste* conscious, and thus increase the atmosphere of communalism. It seems, those well-wishers of the country suggested that backwardness should be determined taking an individual as a unit, but not a caste or a section of a religious community. Therefore, the Chairman in his covering letter describes persons like women, villagers etc., as backward.

7. Till November 1, 1956, the erstwhile State of Mysore had treated all castes and communities, except Brahmins, Anglo-Indians and Europeans, as backward for purposes of Article 15(4) and 29(2), and Article 16(4). Consequent on the reorganisation of the State in November 1956, some uniform list was needed, because, five different parts formed the new State. In the Bombay, Madras, Coorg and Hyderabad areas of the *new* State, old lists of their parent States were allowed to continue. Certain castes and communities in one part were treated as backward, while in another part they were non-backward. The reason was that the old Mysore State had treated all communities and castes as backward (except Brahmins), and necessarily when such communities and castes were not considered so in the integrated areas they demanded the extension of the omnibus Order of the old Mysore Government to be made applicable to those areas also. Hence, in July 1958 a Government Order was issued on the lines of the old Mysore Government Order stating that all castes and communities, excepting the Brahmins, were backward in the entire new State. When the constitutionality of the said G.O. was questioned in the High Court, the same was quashed. In 1959 another Government Order was issued stating that all castes and communities except Brahmins, Baniyas, Kshatriyas (Kayastas), Muslims, Christians and Jains were backward. When questioned, the said Government Order also was quashed by the High Court. The State Government appointed a Committee under the Chairmanship of Nagana Gowda to advise the Government as to the criteria to be adopted in determining which sections of the people in the State should be treated as socially and educationally backward. The terms of reference were similar to those of the Kalelkar Commission. This is what the Committee stated about the *social* backwardness of castes and communities. We have reproduced the whole of the Chapter.

"SOCIAL BACKWARDNESS

The term 'Social Backwardness' is not defined in the Constitution. The report of the Backward Classes Commission also does not give a correct definition of this term. Higher *social status* has generally been accorded on the basis of *caste* for centuries. The *low social position* of any *community* is therefore due mainly to the social *caste* system. There are ample reasons to conclude that social backwardness is based mainly on racial, tribal, caste and denominational differences, even though economic backwardness might have contributed to social backwardness.

2. The Committee is of the opinion that the term *Social backwardness* used in Article 15(4) of the Constitution relates to *Social hierarchy based on the caste system.* The only practical method of assessing *social* backwardness is with reference to the *position occupied by a community* in society. Therefore, for the purpose of determining the *social* backwardness of any community, the *position* of that community in the social *hierarchy* should be taken into account.

3. The members of the Committee have with their knowledge of the social system in the state and with the experience and knowledge gained by them during their tours, come to the conclusion that *social backwardness of a community should be judged mainly by the status accorded to that community* in society in general (apart from individuals). A contributory factor is the general economic condition of the community. *Based on the above criterion* communities mentioned in statement 2 have been classified as *socially* backward.

4. We are aware that Muslims and Christians do not recognise the *caste* system. *Yet the fact remains that the idea of high and low has also permeated the Muslim and Christian society.* In practice, the Muslims and Christians have accepted the *caste* as a social distinction. In the South social distinction is still recognised between sections of Muslims and groups of Christians. Therefore, the caste system, though in a less rigorous form, is practised among Muslims and Christians also in South India. While deciding the *Social* backwardness or forwardness of those communities, therefore, *we have taken the above factors into consideration.*

Lingayats : (i) The Committee is of the opinion that the entire Lingayat community is *socially* forward.

Vokkaligas : (ii) All sections of Vokkaligas excluding Bhunts, are *socially* backward. Bhunts are socially forward.

The standard of education among Bhunts is above the State average, being nine per thousand according to the figures available to the Committee.

Muslims : (iii) A view has been expressed that Muslims cannot be considered as *socially* backward and that only a few sections among them like Mapilla, Pinjari, Chapparband, Laddaf, Kasab (Kasai), Kotharge, Dudekula, Labbe and Pindare can be considered as *socially* backward. But a majority of the members of the Committee have agreed that the Muslim community as a whole should be classified as *socially* backward".

Some representations were made to the Committee, and after they were considered, the Committee came to the following conclusion :

After considering carefully the various suggestions made for the 'classification of backward classes' in the State the Committee has come to the conclusion that the following criteria should be adopted for 'classifying' backward classes :—

(i) Social backwardness of the community should be judged by the *status* accorded to the community in general (apart from individuals).

(ii) Its general educational backwardness should be judged on the basis of some of the fixed standards of education.

(iii) The representation of the community in Government service should also be taken into account.

8. With certain modifications, the Government accepted the recommendations made by the Committee. This was challenged in the Supreme Court.[8] We have given relevant extracts of the Reports of the Backward Classes Commission and the Mysore Backward Classes Committee, because the judgment of the Supreme Court cannot be understood properly and in its entirety without those materials.

9. We cannot proceed to deal with the judgment of the Supreme Court without adding a few words at this juncture. Many think that the expression used in the Constitution is 'classes of citizens' and not 'castes of citizens'. And that, therefore, 'classes' and 'castes' are not synonymous. We have already explained the historical, legal and constitutional meaning of the word *class*. It would be a repetition in us to say the same thing here again. The Supreme Court in its judgment in Balaji case used the expression 'classes of citizens' or 'groups of citizens' which is likely to be interpreted as a body of persons drawn at random on the basis of income or occupation of individuals. The Supreme Court has used it in the way we have explained.

10. After the decision was given by the Supreme Court in the said case,[3] the Mysore Government issued a G. O. classifying *individuals* as backward classes for purposes of Art. 15(4). Similar Government Order has also been issued under Art. 16(4). The first Government Order was questioned in the Mysore High Court[4] soon after it was issued. It was contended on behalf of the State that the State was guided by the Supreme Court decision [3] in the issue of the said Government Order. The Government Order states that a student is backward if his parent's or guardian's income is less than Rs. 1,200 per annum and that he is either an agriculturist, petty businessman,, artisan or a menial servant. If the student owns lands and buildings fetching income of lakhs of rupees, that does not matter. If the parents have a dozen of children and the income is Rs. 101 per month, all their children are forward. In the case of a father of the only child whose income is Rs. 100 per month, the child is backward. A primary school teacher, whose pay is Rs. 70 p.m. is forward. A peon whose pay is Rs. 90 with a child is backward. A landlord who owns hundreds of acres of land is backward if the Tahsildar certifies that the income was less than Rs. 1200 per year. A widow who gets Rs. 15 by way of rent from her small house is forward. The backwardness is of an individual, and on the date of the certificate. If the businessman makes profits to any extent after the date of the certificate, the child is still backward. In the matter of reservation of posts, a candidate might be a Gazetted Officer with a salary of Rs. 500 per month but he is backward when he applies for a higher post, provided the parent or guardian of the Gazetted Officer secures a certificate of the type described above from a Tahsildar. The Gazetted Officer is backward in relation to his father, but the children of the *backward* Gazetted Officer are forward, because the father is a Gazetted Officer. While some brothers and sisters could be backward the other brothers and sisters could be forward. Cabinet Ministers and Legislators and High Court Judges could be backward under this Scheme. This Scheme is appreciated by all those who are benefitted under it. They say it has worked very well. When the validity of the said Government Order issued under Art. 15(4) was questioned in the High Court[4] the same was not quashed.

11. We have set out in detail the background and the history of the earlier Government Order issued on the recommendations of the Nagan Gowda Committee. The said order was impugned in Balaji case. The grounds of attack in the Supreme Court were :

1. The *basis* adopted by the Order in *specifying* and *enumerating* the socially and educationally backward classes was unintelligible, and irrational, and the classification made on *that basis* was inconsistent with and outside the provisions of Art. 15(4) and

2. The *extent of reservation* prescribed by the said Order was so unreasonable and extravagant that the Order, in law, is

not justified by Art. 15(4), and in substance it was a fraud on the power conferred by the said Article on the State.

Materials like the Reports of the Kaka Kalelkar Commission and the Nagana Gowda Committee, the G.Os. issued on the basis of the recommendations of the Nagana Gowda Committee and the Report of the Commissioner for Scheduled Castes and Scheduled Tribes for 1958-59 were placed before the Supreme Court, and we have already referred to the relevant parts. *What was questioned in the Supreme Court was not the taking of a caste, a tribe or a community as a unit of specification, for as already shown, it cannot be questioned, but the principle or the common ground of taking the status of a caste or a community in the hierarchy of castes as the determining factor of its social backwardness was questioned.* The Supreme Court in paragraphs 16, 20 and 21 says, while dealing with certain provisions of the Constitution and the object of Article 15(4) :

> The classification made by the Committee and the enumeration of the backward communities which it adopted shows that the Committee virtually equated the *classes* with the *castes.* According to the Committee, the entire Lingayat community was socially forward, and that all sections of Vokkaligas, excluding Bhunts, were socially backward. With regard to the Muslims, the majority of the Committee agreed that the Muslim community as a whole should be classified as socially backward. The Committee further decided that amongst the backward communities two divisions should be made (i) the Backward (ii) the More Backward, (Para 16).
>
> It seems fairly clear that the backward classes of citizens for whom special provision is authorised to be made are, by Article 15(4) itself, *treated as being similar to the Scheduled Castes and Tribes.* Scheduled Castes and Scheduled Tribes which have been defined were known to be backward and the Constitution makers felt no doubt that special provision had to be made for their advancement. *It was realised that in the Indian society there were other classes of citizens who were equally, or somewhat less, backward than the Scheduled Castes and Scheduled Tribes and it was thought that some special provision ought to be made even for them* (Para 20).

After referring to Article 338(3) the Court said :

> It would thus be seen that this provision contemplates that *some backward classes may by the Presidential Order be included in Scheduled Castes and Tribes...That helps to bring about the point that the backward classes for whose improvement special provision is contemplated by Article* 15(4) *are in the matter of their backwardness, comparable to Scheduled Castes and Scheduled Tribes.* (Para 20).

> In considering the *scope* and *extent* of the expression " backward classes " under Article 15(4), it is necessary to remember that the concept of backwardness is not intended to be relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. If such relative tests were to be applied by reason of the most advanced classes, there would be several layers or strata of backward classes, and each one of them may claim to be included under Article 15(4). (Para 21).

12. Article 338(3) says that references to Scheduled Castes and Scheduled Tribes mean references to *such other backward classes*. On the application of the *doctrine of Ejusdem Generis* (or *the rule of noscuntur a sociis*), considering the judicial decisions, official and non-official communications, the history and usage there is absolutely no doubt that *classes* means *castes, tribes,* or *communities* or their parts or groups. But it is qualified by two other words, namely, *such* and *backward*. Therefore a class (meaning a *caste, tribe* or a *community*) to claim to be included under Article 15(4) should be *backward* socially and educationally ; its backwardness should be *such* as that of a Scheduled Caste or a Scheduled Tribe. Mere *social* and *educational* backwardness in relation to the highest classes is not enough. Because, there are, as every one knows, a number of layers or strata. When we think of relative backwardness there is always a class which is at the top, and if relative backwardness is the test, all other castes and communities that are below it are, undoubtedly, backward. But their Lordships say that mere *relative* backwardness is not enough. "Scheduled Castes " and " Scheduled Tribes " are known to be at the bottom of the social ladder. A class, to claim to be included under Article 15(4), should be so backward that it should deserve to be included in the Schedule of the Castes or of the Tribes, if the President of India (Parliament) becomes pleased to do so. That is why the word *backward* is qualified by the word *such,* meaning, of the same degree or kind or extent in backwardness as are the Scheduled Castes and Scheduled Tribes. That is the object of Art. 15(4). But what did the Nagana Gowda Committee do ? It took *caste* as the sole basis ; in other words, it took the *status* of a caste or a community as the *determining principle* to decide its *social backwardness*. Consequently, all castes, communities and tribes were notionally placed in the graded order, one above the other, and the social backwardness of a caste or community was determined on the basis of the low status of a caste or community in relation to the top ones. Its result was the enumeration and specification of castes and communities as *socially* backward on the *sole basis of caste*, in other words, on the sole principle of *status, rank or position* in relation to the ones which were at the top. The Committee equated *classes* with *castes* (with *statuses* or *ranks* or *positions*) and ignored the significance of the qualifying word *such*. In this way the word *class* was equated with *caste* not only in the concrete sense but also

in the abstract sense of *status* or *rank*. This is not permitted by Art. 15(4), say their Lordships. While holding that Scheduled Castes and Scheduled Tribes are *backward classes* and that *some other backward classes* for whose improvement special provision is contemplated are, in the matter of their backwardness, comparable to Scheduled Castes and Scheduled Tribes and that those other classes should be *such* as could find a place in the Schedule of the Castes or Tribes by the Presidential Order *(end of paragraph* 20), their Lordships immediately in the next sentence placed the expression *backward classes* in the inverted commas, and then proceeded to examine the *scope* and *extent* of the power of the State. Hence, the word classes used subsequently in the judgment, dealing with the *scope* of the expression, carries the meaning given to it as those classes of citizens who are backward to such an extent or degree that they should be comparable to Scheduled Castes and Scheduled Tribes, and further they should deserve to be specified in the Schedules of the Castes or Tribes under Article 341 or 342. How can an individual of poor economic income find a place in the Schedule under Art. 341 or 342 ? Therefore, their Lordships clarify by saying that " *in this connection it is, however, necessary to bear in mind that the special provision is contemplated for classes of citizens and not for individuals as such* ".

> . . . . . Though *the caste* of the group of citizens may be relevant, its importance should not be exaggerated. If the classification of backward classes of citizens was based solely *on the caste* of the citizen, it may not always be logical and may perhaps contain the vice of perpetuating the *castes* themselves (end of para 22).
>
> Besides, if the *caste* of the *group* of citizens was made the sole basis for determining the *social* backwardness of the said *group,* that test would inevitably break down in relation to many sections of Indian society which do not recognise *castes in the conventional sense known to Hindu society.* How is one going to decide whether Muslims, Christians or Jains or even Lingayats are *socially* backward or not ? The *test of caste* would be inapplicable to those groups, but that would hardly justify the exclusion of these groups *in toto* from the operation of Art. 15(4). It is not unlikely that in some States *some* Muslims or Christians or Jains *forming groups* may be *socially* backward. That is why we think that though *castes* in relation to Hindus may be a relevant factor to consider in determining the *social* backwardness of *groups or classes of citizens,* it cannot be made the sole basis or the dominant test in that behalf. *Social backwardness* is on the ultimate analysis the result of poverty to a very large extent.
>
> The *classes* of *citizens* who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It

is true that social backwardness which results from poverty is likely to be aggravated by consideration of *caste* to which the poor citizens may belong, but that only shows the relevance of both *caste* and poverty in determining the backwardness of citizens. (Para 23).

(24) The *occupations* of citizens may also contribute to make *classes of citizens* socially backward. *There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also* plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of *social* backwardness is the problem of rural India and in that behalf, *classes of citizens* occupying a social backward position in *rural* area fall within the purview of Art. 15(4). (Para 24).

13. Their Lordships held that the expression "*classes of citizens*" appearing in Art. 15(4) are those castes, tribes, or their parts or groups which are similar to Scheduled Castes and Scheduled Tribes and that such castes, tribes or groups may, by the Presidential Order, be included in either of the two Schedules. That helps to bring out the point to know as how they should be determined. The Backward Classes Commission appointed by the President and the Mysore Backward Classes Committee proceeded to take *caste* as the *sole basis* in determining the *social* backwardness of a *group* or *class of citizens*. It may be alright to consider the *caste* i.e., *status* in the case of Hindu groups or classes, because it is the *only* religion which conventionally divides the groups as *high* and *low*. Muslims, Christians, Jains, Buddhists and Lingayats are separate religions and religious denominations not recognising the division of society into *high* and *low*, although there are *distinct* groups and sections among those communities. The Commission and the Committee took *status* (*caste*) as the sole basis in determining the *social* backwardness and enumerated the castes, tribes and communities. As already stated by the Supreme Court, if *status* is made the sole basis every class or section below the top section or class may claim to be included in the list under Art. 15(4). Further, the test of *status* is inapplicable to Muslim, Christian, Jain, Buddhist and Lingayat sections. The Commission and the Committee applied the test of *status* even to those communities and indirectly helped perpetuation of *statuses* (*castes*). This approach adopted by the Commission and the Committee is evident both from their recommendations and the enumeration of all castes, tribes, and sections of *all* the religious communities. The Muslim and Christian communities, which do not have, or at least do not believe in, *statuses* amongst their groups took it as a bait to claim concessions and privileges for their *groups* also. This is not a healthy sign. Constitution intends to create a society without *statuses*, particularly the Hindu society, eradicating the idea of *high*

and *low*. The disabilities under which certain Hindu castes and sections are suffering are intended to be removed. Laws relating to the removal of caste distinctions and disabilities on the ground of low status, temple entry, secularising some aspects of Hindu Law etc. have already been made after the Constitution came into force. But the Commission and the Committee, by adopting the *status* test did not realise that the distinctions of *high* and *low* would enter the Muslim and Christian communities. If *social* backwardness is determined only on the ground of *status* of a *caste* it does apply to Hindu community. According to their religion Muslims do not have such statuses. Christians too do not have *such statuses*. Similarly, the Jain and the Lingayat denominations. There are groups amongst them, but definitely not the *statuses*. Therefore, the Supreme Court says that the *test of social* backwardness should be such as would be applicable alike to Hindu castes and tribes and Muslim, Christian, Jain and Lingayat groups. The Court has suggested that 'poverty test', 'occupation test' and 'residence test' should be applied to determine the *social* backwardness of any section or class irrespective of the religious community to which it belongs. But, while applying those tests a distinct group or section of a religious community, should be taken as a unit, *and not an individual.*

The Court says that the problem of India is the problem of rural India. Because, most of the backward classes live in rural areas, and unless some comprehensive and massive economic measures are introduced exclusively for the rural areas, the economic conditions of the backward classes cannot be improved. That is why the Commission and the Supreme Court say that the problem of backward classes is the problem of rural India. But there are certain castes, tribes and sections who are still primitive in their habits and character. They are neither Scheduled Castes nor Scheduled Tribes. Some of the castes and tribes are excluded from the Presidential Schedules. Some castes and tribes find place in the Presidential Schedules in relation to some parts of the same State. Or, in one State they are considered as Scheduled Castes or Tribes but not in the adjoining States. Such castes and tribes should *per se* be considered as *socially backward.* Their *social* backwardness is known to one and all. The test of *caste* (*status*) would be enough in the case of those castes or tribes.

Their Lordships in Balaji case after dealing with the educational backwardness of castes or communities have stated in simple and unambiguous words that:

> There can be no doubt that the object making a special provision for the advancement of the *castes or communities there specified* is to carry out the directive principle enshrined in Art. 46. (Para 30).

According to the Supreme Court the educational standard should not be as high as the High School Standard. Even if it was a proper one, the manner in which the Nagana Gowda Committee and the Government did was highly arbitrary. It is, therefore, suggested by the Supreme Court that *castes* or *communities* whose average standard of education is considerably below the state average should undoubtedly be taken as *educationally* backward.

14. Regarding the educational backwardness of castes and communities, the Nagana Gowda Committee divided the Backward Classes into two categories, one *merely* Backward and the other *More* Backward. Classes of citizens forming castes and communities whose student average was below the State average but above 50 per cent of the State average were categorised as merely backward, and classes of citizens forming castes and communities whose student average was below 50 per cent of the State average were categorised as More Backward. The Supreme Court in Balaji case while disapproving of the sub-classification of backward communities as Backward and More Backward said :

> " It is only communities which are well below the State average that can properly be regarded as *educationally* backward classes of citizens ". (Para 26).

The Supreme Court observed that they were not satisfied that the State was justified in taking the view that *communities or castes* whose average of student population was the same as, or just below the State average, should be regarded as *educationally* backward classes of citizens.

15. As regards the *extent of reservation* the Supreme Court held that the reservation should not in any case go beyond 50 per cent of the total seats and that there can be *no two lists* of backward classes. When such determination of the backward classes is made financial help should be extended only to such of those backward classes who really need it. The grant of financial help is made under Art. 15(4). Reservation of seats in educational institutions is made under Art. 29(2) read with Art. 15(4). Reservation is open to all Backward Classes irrespective of income. But financial help should be given only to the deserving.

It is in this connection the Supreme Court says in paragraph 36 that if the monthly income of a family is below the prescribed minimum, financial help may be given. It is the family of a *backward class,* and not any and every family. And finally the Court, in a way, cautions the States that

> .....In taking executive action to implement the policy of Art. 15(4), it is necessary for the States to remember that the policy which is intended to be implemented is the policy which

has been declared by Art. 46 and the Preamble of the Constitution. It is for the attainment of *social* and *economic* justice that Art. 15(4) authorises the making of special provisions for the *advancement of the communities there contemplated* even if such provisions may be inconsistent with the fundamental rights guaranteed under Art. 15 or 29(2). The context, therefore, requires that the executive action taken by the State must be based on an *objective approach free from all extraneous pressures.*

The Supreme Court struck down the said Government Order as being a fraud on the Constitutional power conferred on the State by Art. 15(4).

It is therefore clear that the provisions under Arts. 15(4) and 29(2) read with 15(4), are for the educational, social and economic upliftment of *classes of citizens,* forming *castes, tribes* and *sections* that are similar to Scheduled Castes and Scheduled Tribes in the matter of their backwardness.

References—

1. Backward Classes Commission Report Vol. I, Para 20.
2. Ibid, Para 21.
3. A.I.R. 1963 S.C. 649.
4. A.I.R. 1964 Mys. 132.

CHAPTER XIII

ARTICLE 14, AND HIGH COURT AND SUPREME COURT DECISIONS.

1. In the matter of determination and categorisation of backward classes, Article 14 does not come in the picture at all. Article 14 permits the making of a *classification* for the purpose of achieving an object of law. Whereas Article 15(4) and Article 16(4) are intended to carry out the object, not of any law but, of the Constitution as contained in Article 46, and the Preamble. Article 14 permits the making of *new classes* for the purpose of any law. Constitution recognises the *factually existing social classes* and permits the determination and specification of those classes under Article 341, Article 342, Article 338(3), Article 15(4) and Article 16(4). The provisions of the Constitution in this regard do not permit *new classification*. They only permit specification of the already existing and constitutionally recognised social classes. If a 'classification' of backward classes referred to in Article 15(4) or 16(4) is permissible under Article 14, the exception clauses in Article 15 and 16 are redundant. If such a 'classification' is permissible where was the need for specifically incorporating clause 4 to Articles 15 and 16, and also to 29(2)? When in 1950 the Madras Communal G.O. was sought to be justified under Article 14 the Madras High Court[1] and the Supreme Court rejected that contention and the Communal G.O. was quashed as being outside the scope of Article 15 and Article 29. Under Article 14 the *test* is the reasonableness of the 'classification' in relation to the object of a law, whereas under Article 15(4) the *reasonableness consist in the application of the tests to find out the existing and constitutionally recognised classes to achieve the object of the Constitution*. Article 14 does not govern other provisions of the Constitution. Constitutional provisions, like the First Amendment by which clause 4 was inserted in Article 15 in 1951, are not laws of the nature referred to in Article 13 as held by the Supreme Court, and so 'classification' of backward classes is outside the scope of Article 14. The validity or otherwise of the determination and *specification* of the existing and constitutionally recognised classes depends upon the *scope* of Article 15(4) and 16(4), and not upon the *scope* of Article 14.

2. When the constitutionality of the July 1963 Mysore G.O. 'classifying' individuals for purposes of Article 15(4) on the basis of occupation and income of the parent/guardian of the student was questioned in the Mysore High Court in Viswanatha case[2] the same was not quashed on the ground that such *classification* was not

violative of Article 14. With great respect to their Lordships of the High Court, it is submitted that their decision is not correct. Realising that the said July 1963 G.O. could not be justified under Article 15(4) itself, the Government took shelter under Article 14, and the High Court accepted that contention to uphold its validity under Article 14. *But the fact remains that the Mysore High Court did not justify the Government Order under Article* 15(4).

The Supreme Court in Balaji[3] case said that the G.O. struck down by it had taken *caste as the sole basis for the enumeration of castes and communities* as backward under Article 15(4). Their Lordships after referring to the dictionary for the meaning of the word class say: "A class shows division of society according to *status, rank* or *caste*". A class is not just a social division or group, though it is so in the concrete sense. It also connotes *status* or *rank* in the abstract sense. The Muslim and Christian communities have divisions or groups as the Hindu community has. But, as the Supreme Court has put it, the *feeling of superiority and inferiority* based on *status* or *rank* or *caste* is unique to Hindu community. We have seen that Muslims, Christians, Jains, and Lingayats have groups in their respective community. But the test of *status (caste)* to those communal groups would not apply, for they have no *statuses*. It is alright to apply the *caste* test to Hindu castes (or groups). The use of the words 'group' and 'class' by the Supreme Court in Balaji case in the context in which they have been used denote castes of Hindus and distinct communal sections of non-Hindus in the former sense. It is submitted with respect that this distinction made by the Supreme Court in Balaji case was not understood by the Mysore High Court in Viswanath case. The High Court appears to have thought that the tests of (1) occupation, (2) income, (3) residence and (4) caste should be applied to an individual candidate. No doubt, those tests are relevant and important, but they should be applied to a distinct communal group to determine its *social* backwardness.

3. After scrutiny of particulars as how the scheme had worked resulting in injustice to those really backward classes, the High Court said that the problem was a *human problem*. It said that it cannot be *tackled purely from an ideological plane. Nor can it be reduced to a legal quibble. The Court said that there can be no dispute that most if not all the castes that were classified as most (more) backward in Dr. Nagana Gowda Committee's report can and ought to have been taken into consideration in making the classification.* For this proposition His Lordship Mr. Justice K. S. Hegde (as he then was), speaking for the Bench, said that *if I understand the Supreme Court's decision aright, what that decision says is that the 'caste' basis is undoubtedly a relevant, nay, an important basis in determining the classes of backward Hindus* ..... and the learned Judge concluded by expressing that *I earnestly hope that soon the*

State will make a more appropriate classification lest its bonafides should be questioned.

The reason why the Mysore High Court did not quash the Government Order *classifying individuals of poor economic income as backward,* among the ones already stated, was that it was only a 'temporary measure'. It was stated by the Government that the "problme of determining who are socially and educationally backward classes is a very complex one. An elaborate investigation and collection of data and examination of such data which would inevitably involve considerable length of time may be desirable. But the obligation of the State to make special provision for the advancement of the backward classes is a pressing problem, and cannot be postponed." *Pending such elaborate study and investigation of the problem* Government considered that individuals of poor economic income be treated as backward for purposes of Article 15(4). The other reason was, by the time the High Court gave its ruling on 30th September 1963, admissions to the educational institutions were made on the basis of the said Government Order and the students who were benefited under the Government Order were not parties to the proceedings.

The matter did not end at this.

The State Government had issued some other Orders prescribing the allotment of marks at the interview and regulating the admission of students to various technical and professional colleges affiliated to the two Universities in the State. The High Court did not quash those Orders. Some of the Petitioners feeling aggrieved by the decision of the High Court in not quashing the other G.Os., filed appeal petitions in the Supreme Court.[4] The appellant Chitralekha and another did not question the Order under Article 15(4). Indeed, they had not challenged the validity of the 'backward class' G.O. in the High Court. The complaints in Chitralekha case were directed against the *other* Government Orders. The validity of the G.O. under Article 15(4) was not attacked. What was objected to was only the observations of the High Court that '*caste was a relevant, nay, an important basis*' and that the State should soon "*make a more appropriate classification lest its bonafides should be questioned*".

When the Chairman of this Commission (L. G. Havanur) came to know of the said appeals, he filed Intervention Petition No. 2579/1963 on behalf of two students belonging to educationally more backward castes than the most backward Scheduled Castes and Scheduled Tribes seeking leave of the Supreme Court to permit him to argue against the Government Order, and the decision of the High Court thereon. The Supreme Court in Balaji case had permitted the Sri Vaishnava Association and the Arya Vyshya Mahasabha of

Bangalore to intervene in the proceeding, and being inspired by that fact, L. G. Havanur, Advocate, (now the Chairman of this Commission) filed intervention application on behalf of two students who had filed Writ Petitions in Mysore High Court challenging the validity of the so called ' backward classes ' G.O.

Permission to intervene in Chitralekha case was not granted by the Supreme Court.

5. Before the Supreme Court (in Chitralekha case) the appellants supported the Government Order and also the decision of the High Court, except those observations. The learned Attorney-General also, appearing on behalf of the State of Mysore, naturally, supported the Government Order and the decision of the High Court. It is in this context, the Supreme Court in Chitralekha case *hastened to make it clear* whether or not the observations of the High Court were in conflict with the observations of the Supreme Court in Balaji case. In an attempt to interpret the judgment in Balaji case the Mysore High Court wrongly interpreted it. Similarly, in Chitralekha case, the Supreme Court in an attempt *to make clear* the observations in Balaji case, made quite antagonistic observations in a *hasty* manner. In a matter connected with great social problems like this, the Supreme Court, being the highest tribunal in the land, should not have attempted to explain Balaji case when there was none to argue against the Government Order. Instead, the Supreme Court in Chitralekha case should have left the matter to be urged in subsequent proceedings, if an occasion were to arise to do so. The result of *haste* made by the Supreme Court in Chitralekha case is the erroneous explanation of the Balaji case. In effect, the Supreme Court in Chitralkha case, justified the ' classification ' of backward classes under Article 14. The judgment in Balaji case cannot be better understood without reference to the material placed before it in that case. And no such material was placed before the Supreme Court in Chitralekha case. If sentences and paragraphs are dissected from the rest, one is apt to miss the real meaning. It is submitted, with respect, that in Chitralekha case the Court has done so. We have already extracted certain portions of the judgment in Balaji case and explained them with reference to the Reports of the Backward Classes Commission and the Nagana Gowda Committee, and the earlier Government Orders. The ' *such other backward classes* ', say Their Lordships in Balaji case, are *similar to Scheduled Castes and Scheduled Tribes, and they may by the Presidential Order be included in Scheduled Castes and Tribes. That helps to bring out the point that the backward classes for whose improvement special provision is contemplated by Article* 15(4) *are in the matter of their backwardness, comparable to Scheduled Castes and Scheduled Tribes.*

6. Considering the object of the Constitution, the historical, legal and constitutional meaning, the Court decisions, the natural and

ordinary meaning and the context, the expression *classes* appearing in the Constitution means, *castes* and *tribes* of Hindus, tribes and sections of other religious communities. 'Other Backward Classes' are groups belonging alike to Hindu, Muslim, Jain, Christian and Lingayat communities as held in Balaji case. In Chitralekha case the Supreme Court says :

> If the makers of the Constitution intended to take castes also as *units* of social and educational *backwardness*, they would have said so as they have said in the case of Scheduled Castes and Scheduled Tribes.

What, perhaps, the Court intends to say is that '*specification*' cannot be by *castes and communities*. But the only way of specifying the backward classes consists in enumerating them *by* castes and communities, and while determining them as backward, *caste* alone should not be the basis, i.e., status of caste or community should not be the sole basis.

Next it said :

> If the intention was to equate classes with castes, nothing prevented the framers of the Constitution to use the expression, *Backward Classes or Castes.*

Constitution intends to help all groups irrespective of their religious faith. Hence, *classes* is used to cover distinct backward groups of all communities. The Court in Chitralekha case says :

> The juxtaposition of the expression 'backward classes' and 'Scheduled Castes' in Article 15(4) also leads to a reasonable inference that the expression 'classes' is not synonymous with 'castes'.

7. Here again, with utmost respect, it is submitted that the Court committed a mistake in comparing two statutory words for their meanings. There is no rule of that type for ascertaining the meaning of statutory words or phrases. The doctrine of ejusdem generis and the rule of noscuntur a sociis should have been applied. The 'juxtaposition' rule is unknown to law in the interpretation of statutes and phrases. How could ideas expressed through the medium of language be ascertained by keeping words side by side ?

If the juxtaposition rule, as applied by the Supreme Court in the interpretation of clause 4 of Article 15, is applied to Article 16(4) there can be no reservation of posts in favour of Scheduled Castes and Scheduled Tribes under the services of the Union or the State. The simple reason is, if the Supreme Court ruling is accepted as correct, while 15(4) uses the expressions " socially and educationally

backward classes of citizens", "the Scheduled Castes" and "the Scheduled Tribes", Article 16(4) uses only the expression 'backward class' and so, reservation to Scheduled Castes and Scheduled Tribes under Article 16(4) would be outside the scope of that Article, and thus unconstitutional. The expression 'class' in Article 16(4) means caste, tribe or racial community and that, therefore, the juxtaposition rule has no application at all, besides such a rule of interpretation being unknown to legal jurisprudence.

It pains us deep to say that the judiciary in any case relating to 'Other Backward Classes' has not applied the important rules of interpretation, while it has done so in other cases. In the De-recognition of Rulers case[5] the Supreme Court held:

> "It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment". (Para 138 end).

In the said De-recognition of Rulers case, it applied the doctrine of *ejusdem generis* to construe the meaning of the words "other person" in the definition clause of Article 366 (22) in the following words:

> "The words 'Other persons' should be read ejusdem generis with the words "Prince, Chief" preceding the words 'other person'. Indian Rulers were known by various names such as Maharana, Maharaos, Maharaja, Nizam, etc. To avoid listing all those names in Article 366(22), the draftsman has used the words 'other persons', but the meaning of those words has been made clear by the words accompanying the words 'other person'. (Para 263).

Article 126 and Article 223 relating to the appointment of acting Chief Justice of India and the acting Chief Justice of a High Court, use the words similar to the ones used in Article 338(3) and Article 15(4). The words 'such' and 'other' have not been defined in the Constitution nor the words 'Judges' and 'court'. The acting Chief Justice should belong to the same category of judges and of the same Court. In the same way, such other backward classes belong to the similar category and similar classes as are the Scheduled Castes and Scheduled Tribes.

Class is synonymous with caste or tribe, so far as Hindus are concerned.

Class is synonymous with tribe, or racial group, so far as tribal communities are concerned.

Class is synonymous with section or group so far as Muslim, Christian and other religious communities and denominations are concerned.

References—

1. A.I.R. 1951 Mad. 120 (F.B.) Champakam Case.
2. A.I.R. 1964 Mysore 132 Vishwanatha Case.
3. A.I.R. 1963 S.C. 649—Balaji Case
4. A.I.R. 1964 S.C. 1823—Chitralekha case.
5. A.I.R. 1971 S.C. 530—H. H. Maharaja Madhava Rao case.

CHAPTER XIV

RESERVATION IN SERVICES AND EDUCATIONAL INSTITUTIONS

Historical Background

From a close analysis of the executive actions taken by the various State Governments, and the pronouncements of the judiciary in the matter of reservation of posts in Government services and seats in educational institutions, it becomes evident that the judiciary committed mistakes in ignoring to apply the doctrine of *ejusdem generis* and other rules of interpretation in giving meaning to the expression *classes of citizens* occuring in the Constitution. The executive did not care to look to the debates in the Constituent Assembly and the Parliament while it attempted to define the expression "classes of citizens" and while it attempted to identify those 'classes of citizens' who are backward. In this Chapter we have referred to the debates of the Constituent Assembly and Proceedings of the Parliament to know what the framers of the Constitution meant by the expression " backward classes of citizens ". Before we venture to refer to those proceedings, it is necessary to narrate in brief, the historical background as respects the reservations made in government services and educational institutions in favour of backward classes. The reservation in favour of backward classes is not a novel idea introduced for the first time in the Constitution. In almost every Province of British India and Princely State reservations in government services and in educational institutions were made in favour of the backward classes on the ground of their religion, race or caste.

Position in South India

In the British Province of Madras and in the Princely State of Mysore there was preponderance of Brahmins in public services and the Mysore Government, following the Madras pattern, made reservation in favour of backward classes as far back as 1874, during the days of Commission. Again in 1895, appointments in Police Department were made reserving posts in fixed proportions in favour of the Brahmins, the Musalmans and other Hindu castes. Although such reservations were made from the year 1874 the representation of other communities in the Government Departments was not at all satisfactory and the Brahmins continued to have disproportionately large representation. Therefore, on 19th/21st January 1895 a Circular[1] was issued by the Mysore Government reserving posts in favour of the backward classes. In 1914 a system of recruitment by

nomination was introduced by which the posts of Assistant Commissioners were filled appointing members of the backward classes. Inspite of such encouragement given to backward classes, their position did not improve. Finally, the Mysore Government appointed on 23rd August 1918 a Committee under the Chairmanship of Sir Leslie C. Miller, Kt., the then Chief Justice of Mysore, with (1) Rajasabhabhooshana Dewan Bahadur Sri C. Srikanteshwara Iyer, B.A., B.L., (2) Rajakaryaprasakta Rai Bahadur M. Muthanna, (3) Rao Bahadur M. C. Ranga Iyengar, B.A., (4) Rao Saheb H. Chennaiah (5) Mr. Nawab Gulam Ahmed Kalami, and (6) Mr. M. Basava Iya, B.A., B.L., as Members. While appointing the said Committee, the Mysore Government noticed that even in 1918 there was " a large preponderance of the Brahmin community in the public services " and that, therefore, it was the desire of the Government of His Highness the Maharaja that all other *important* communities in the State should be adequately represented therein. The question that was agitating the mind of the Government in respect of the measures that were taken from 1874 was as to what steps should be taken to encourage the members of the other communities to seek employment under Government in large numbers. With a view to review the whole position from a comprehensive stand-point and to enunciate a policy for future guidance the Government decided to appoint the said Committee to consider the changes needed in the then existing rules of recruitment to public services and to suggest what special facilities be given to the members of the backward communities to encourage them to take to higher and professional education[2].

Neither the Government nor the Committee felt any difficulty about the meaning of the expression ' backward classes ' for the simple reason that the meaning of it was known to one and all as denoting those castes and communities who had no adequate representation in public services. In other words, the expression ' backward classes ' was used by the Mysore Government right from 1874 to apply to those castes and communities, including the Mohammadan community, who had no adequate representation, or who had no representation at all, in government services. The Miller Committee proceeded on the definition that the expression ' backward classes ' meant castes and communities which had less than 5 per cent of the literates in English as enumerated in the Census Report of 1911. Although the Indian Christian, Mudaliar and Pillay communities had more than 5 per cent literates in English, those communities were also treated as backward classes for the purpose of recruitment to government services[3]. Therefore, the Committee defined the term " Backward Classes " to include all the communities in the State other than the Brahmins. However, since the Europeans and the Anglo-Indians had English for their mother-tongue and therefore had higher percentage of English literates they were excluded from the definition of the term ' backward classes '. The expression ' backward classes ' was a generic term which included the ' Depressed Classes '.[4] That that

was so in the Province of Madras also is clear from the Report of the Miller Committee.

Now, taking the State of Jammu and Kashmir as an instance in North India, reservation of posts were made to the extent of 50 per cent in favour of Muslims, 60 per cent of the remaining posts in favour of Jamvi Hindus (who are Dogras) and the remaining 40 per cent of the 50 per cent in favour of Kashmiri Pandits and few posts in favour of Sikhs. The said communities *viz.*, Muslims, Sikhs and Hindu castes like Dogras were defined as " Backward Classes ".[5] That the Brahmins had preponderance also in services under the Government of India could be traced to the policy followed since 1925 for reducing their strength. The result was a tussle between the caste-Hindus and the Muslims for their representation in the Central Services.[6] The Home Department Resolution dated 4th July 1934 provided for reservation in Indian Civil Services, Central Services Class I, Class II and Subordinate services under the control of the Government of India to the extent of 25 per cent of the vacancies in favour of the Muslims and 8 1/3 per cent in favour of other minority communities. Out of the quota reserved for Hindus as a whole, preference was to be given to the members of the Depressed Classes.

At the State level, the tussle was between the Brahmins and the non-Brahmins. The non-Brahmins were dissatisfied with the predominant position the Brahmins had in the State Services. As said before, with a view to safeguard the interests of the non-Brahmins in the services, State Governments, in particular the Mysore and the Madras Governments, followed a policy of reservation of certain percentage of posts to the backward classes.

The Indian National Congress and the Muslim League, the only two important political parties, were opposed to each other in the matter of providing reservation in services to Muslims. After the passing of the Government of India Act, 1935, the Muslim League insisted that in the proposed framing of the Constitution for India Muslims should have a definitely fixed percentage of posts for them and a separate statutory provision be made in that behalf.[7]

Debates in the Constituent Assembly (1947-1949)

The Constituent Assembly appointed in 1947 a Committee called " The Advisory Committee on Minorities, Fundamental Rights etc., " under the Chairmanship of Sardar Vallabhai Patel. There was a proposal for insertion of a clause in the Constitution making reservation in services to the minorities in proportion to their population. The Advisory Committee dismissed the said proposal as " a dangerous innovation."[8] However, it recommended that there should be some provision in the Constitution exhorting the Union and the State

Governments, " to keep in view the claims of all the minorities in making appointments to Public Services consistently with the efficiency of administration."[9] The said recommendation was incorporated in the Draft Constitution as Article 296. The said Article read thus:

Claims of minority communities to services and posts:

" 296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule ".

The provision made in Article 296 of the Draft Constitution to minorities disappeared from the Constitution as finally passed, and in its place Article 335 was substituted making provision only in respect of Scheduled Castes and Scheduled Tribes. Article 335 reads as follows:

" 335. Claims of Scheduled Castes and Scheduled Tribes to services and posts:

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of apointments to services and posts in connection with the affairs of the Union or of a State ".

However, the Constituent Assembly conceded reservation to Anglo-Indian community for a period of 10 years after the coming into force of the Constitution and to backward classes, which term includes Scheduled Castes, Scheduled Tribes and other backward classes, for an indefinite period. The Advisory Committee had recommended that in view of the dependence of Anglo-Indians on certain services, the policy of reservation pursued prior to 1947 should continue for 10 years with a decrease of 10 per cent every 2 years. The said recommendation found favour with the Constituent Assembly, and so Article 336 was incorporated in the Constitution. Though reservation in favour of other *religious minorities* was not accepted by the Constituent Assembly, reservation in favour of Anglo-Indians was undoubtedly a case of discrimination. It is for this reason, Lari, a member of the Constituent Assembly, had to complain: 'You concede reservation to Anglo-Indians but you deny it to the Muslims. Why this discrimination?'.[10] The majority members of the Constituent Assembly who obviously were Hindus, tackled the minorities individually. This is clear from the case of Sikhs. Provision was made for the benefit of the Hindu Scheduled Castes, and so, on that ground the Sikhs demanded that Sikh Scheduled Castes must also be given similar benefits. The contention of the Sikh leaders was

that if no such provision was made in favour of the Scheduled Castes of the Sikh religion, they would embrace Hinduism.[11] When the demand was made by the Sikh leaders for benefits to be extended to the Sikh Scheduled Castes, the leaders of the Hindu Scheduled Castes opposed their demand. Sardar Patel had to intervene and persuade the leaders of the Hindu Scheduled Castes to agree to it ' for the sake of peace '.[12] The other members of the Advisory Committee also seem to have opposed the Sikhs' demand and here again Sardar Patel induced them to agree to their demand on the condition, ' which is in writing, by the representatives of the Sikhs, that they will raise no other question hereafter '. The Sikh community as a whole had been enjoying reservation in services, and on that ground Sardar Ujjal Singh later asked for a provision to be made in the Constitution for the Sikh community as a whole. In a blunt manner Sardar Patel said : ' Your representatives have given in writing that no other question is to be raised '. At this stage, Giani Kartar Singh conceded this and declared : ' No. We will settle it in the Provinces. It is not to be raised here '.[13] Thus, when the Sikhs were silenced, the other religious minorities did not bother about reservation in services at all. The Constituent Assembly's task was eased by the Muslim minority remaining silent on this issue. No doubt, several Muslim members vehemently spoke on the question of reservation in Legislatures to the minorities, but there were only a couple of members who pleaded for reservation in services to them.

Article 292 and Article 294 of the Draft Constitution provided for reservation of seats in the House of the People and in the Legislative Assembly of every State for Muslims, Christians, Scheduled Castes and Scheduled Tribes. Lari felt that reservation in favour of religious minorities in services was far more important than reservation in Legislatures. He said, perhaps, in an emotional manner : ' In the Legislature you have got statutory reservations where they are meaningless, but when you come to the services it is merely said their claims shall be considered. This is a very pious wish..... Take away the reservations from the Legislature and for God's sake give us reservation in services. Here I speak not only for the Muslims of the United Provinces but also for other minority people '.[14]

When the Constitution came to be finally passed ' the pious wish ' expressed in Article 296 to the effect that the claims of all minority communities should be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or of a State, and the reservation made in the House of People and the State Legislatures in favour of the Muslim community and the Indian Christian community disappeared.

It is, therefore, evident that the Constituent Assembly was not in favour of making reservations of posts to religious minorities, except the Anglo-Indian community for a period of 10 years. This, however,

did not mean the giving up of the *principle of reservation* as such and, in fact, the said principle was applied to " backward class of citizens " only. Though Article 10(1) of the Draft Constitution embodied the principle of equality of opportunity and declared non-discrimination on the ground of religion, race or caste, the Constituent Assembly modified the said policy and provided for discrimination in favour of " backward class of citizens " due to the pressure brought by the Hindu members on the Constituent Assembly.

Art. 10(3) of the Draft Constitution read as follows:

> **"Equality of opportunity in matters of public employment:**
>
> 10(3). Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any *backward* class of citizens who, in the opinion of the State, are not adequately represented in the services under the State ".

But, this clause, *viz.*, Art. 10(3), did not contain the word ' backward ' when it was *originally* adopted by the Constituent Assembly. The word " backward " in Art. 10(3) was introduced for the first time in the Draft Constitution by the Drafting Committee. The use of the word 'backward' in Art. 10(3) of the Draft Constitution, now Art. 16(4), was to confine the reservation to a minority of posts to castes, which in the opinion of the State were backward. And a reading of the debates in the Constituent Assembly and in particular of the speech made by K. M. Munshi, the Member of the Drafting Committee, shows that reservations under Art. 16(4) were intended to castes who were backward. Munshi said: 'I can assure the House that at the time when the Advisory Committee met on the last occasion there was no question of providing safeguards for any religious minority. The negotiations proceeded on the footing that except the backward classes who are economically and socially backward and the Scheduled Castes and Tribes who have a special claim of their own, no other minority should be recognised in the Constitution '.[15]

While the reservation in services to the Anglo-Indian community and reservation in Parliament and in the State Legislatures in favour of the Scheduled Castes and Scheduled Tribes should cease after a period of 10 years from the commencement of the Constitution, no such time limit was prescribed for reservation to the 'backward classes ' under Art. 16(4). Pandit Hriday Nath Kunzru wanted reservation under Art. 16(4) to backward classes also to be limited for a period of 10 years, but that suggestion was rejected.[16]

The said amendment of Kunzru was rejected at the instance of T. Channaiah from Mysore who vehemently opposed the prescription of time-limit, and Channaiah wanted ' this reservation for 150 years which has been the period during which opportunities have been denied to them '.[17]

It appears, Damodar Swarup Seth felt doubt about the meaning of the term 'backward'. It is to be noted that the meaning of the term 'class' was not at all in doubt and what was doubted was only the meaning of the word 'backward'. He argued: '. . . . . it is not easy to define precisely the term 'backward'; nor is it easy to find a suitable criterion for testing the backwardness of a community or class. If this clause is accepted, it will give rise to criticism and favouritism which should have nothing to do in a secular State'.[18] T. T. Krishnamachari commented in a lighter vein: 'My honourable friend Mr. Munshi thinks that this word has fallen from heaven like manna and snatched by the Drafting Committee in all their wisdom. I say this is a paradise for lawyers. I do not know if the lawyers who have been on the committee have really not tried to improve the business prospects of their clan or the opportunities of their community or class by framing a constitution of so full of pitfalls.'[19] The words of Krishnamachari were prophetic, and subsequent experience has borne out the truth of those words.

That there was considerable discussion in the Constituent Assembly on the word 'backward' used in Art. 10(3) of the Draft Constitution, now Art. 16(4) is clear from the speeches of Aziz Ahmed Khan, Ari Bahadur Gurung, R. M. Nalavade, Dharma Prakash and Chandrika Ram.[20] Some of those members expressed the view that the meaning of the word 'backward' was vague and some others raised the question whether the term 'backward' included the Scheduled Castes. K. M. Munshi put an end to the doubts entertained about the meaning of the said expression by explaining to them in these words: 'I cannot imagine for the life of me how, after an experience of a year and a half on the Constituent Assembly, any honourable member of the Scheduled Castes should have a feeling that they will not be included in the backward classes so long as they are backward. I cannot also imagine a time when there is any backward class in India which does not include the Scheduled Caste'.[21] Munshi further said that the expression 'any backward class' meant not only the Scheduled Castes and the Scheduled Tribes but also the socially and educationally backward classes referred to in Art. 301 of the Draft Constitution, now Article 340.[22] Inspite of such clarification by Munshi, a certain member asked 'who are those backward classes?', to which Munshi said: 'Art. 301 makes it clear that there will be a Commission appointed for the purpose of investigating what are backward classes . . . . . I may point out that in the Province of Bombay for several years now, there has been a definition of 'backward classes', which includes not only Scheduled Castes and Scheduled Tribes but also other backward classes, who are economically, educationally and socially backward. We need not ,therefore, define or restrict the scope of the word 'backward' to a particular community. Whoever is backward will be covered by it and I think the apprehensions of the honourable members are not justified.'[23]

The controversy over the meaning of the words ' backward ' and ' class ' ended when Munshi categorically referred to the specification of communities treated as backward classes by the Bombay Government. It was felt by us that the said Bombay Government Order, which was in force not only when the Constituent Assembly was in session but also when the re-organisation of States took place in November 1956, should be secured. On a request made by us, the office of the Directorate of Social Welfare, Maharashtra State, by its letter No. OBC/370/T, dated 16th July 1973 sent us a copy of the Government Resolution by which certain communities were treated as backward classes, and the said Resolution was in force on 31st October 1956. The said Government Resolution reads as under :

" Government service, classification of communities for the purpose of recruitment to—

GOVERNMENT OF BOMBAY

POLITICAL AND SERVICES DEPARTMENT

Resolution No. 1673/34
Bombay Castle, 23rd April 1942

RESOLUTION

In supersession of Government Resolution, Finance Department, No. 2610, dated 5th February 1925, and Government Resolution, General Department, No. 9330, dated 29th May, 1933, Government is pleased to direct that the communities included in the accompanying Schedules* A and B should be classified as Intermediate and Backward, respectively, for the purpose of recruitment to Government service. Communities which are not included in either of these schedules should be treated as advanced.

By Order of the Governor of Bombay,

(Sd.) H. K. KIRPALANI,
Chief Secretary to the Govt. of Bombay,
Political and Services Deptt.,"

The Schedules ' A ' and ' B ' accompanying the said Resolution enumerate certain castes, tribes and communities as Intermediate Class and Backward Class.

Schedule ' A ' contains as many as 228 castes and communities including Darji, Gam Vakkal, Gangadikar, Halvakki Vakkal, Indian Christians (other than East Indians, Goans and Mangaloreans), Jains (Chaturta, Panchas and Shetwal only) Kare Vakkal, Karnatak Vishwa Brahma (Panchal), Kuda Vakkal, Kurab, Lingayat, Maratha,

Muslim (other than Miana Muslims), Nayar, Pategar, Rajput, Rangari, Reddi, Telagu Banajig, Tigla, Uppara, Vaishya (*i.e.*, Marath Vani), *viz.*, Komti, Kudale, Bandekar, Pednekar, Sangameshwari, Narwekar and Patne and Vaishya Thakur.

Schedule 'B' contains 49 castes and communities, 29 aboriginal and hill tribes specified in the Presidential Orders under Article 341 and 342, and 130 tribes which are nomadic, semi-nomadic, criminal and begging communities. According to the said Government Resolution communities which were not mentioned either in Intermediate-Schedule 'A' or in Backward-Schedule 'B', were treated as advanced.

From the foregoing it appears, among those who were treated as advanced were the Brahmins, Parsees and Buddhists and certain sections of Muslims and of Jains.

We have seen that the position in the British Province of Madras and in the Princely State of Mysore was similar.

The debates in the Constituent Assembly make it clear that 'backward classes' in Art. 10(3), now 16(4), means not only the Scheduled Castes and the Scheduled Tribes but also the other backward castes. For identification of this class the executive should feel satisfied about their social, economic and educational backwardness. That this is so, is amply clear from the speech of Munshi. That the sole authority to determine communities as backward is the State Government, is clear from the speech of Ambedkar. Although Art. 301 of the Draft Constitution uses only the words 'socially and educationally' but not the word 'economically', Munshi's speech makes a reference to the social, *economic* and educational backwardness. *The Constituent Assembly must, therefore, be deemed to have proceeded on the basis that the socially backward classes are automatically backward economically also.* For historical reasons the social backwardness of a community has necessarily resulted in its economic backwardness. Apart from the speech of Munshi there is sufficient indication of the Constitution makers in favour of this view, because Art. 46 of the Constitution directs the State to promote with special care the educational and "economic" interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. By reading Art. 46 and Art. 340 together, in the context of the speech of Munshi, the class which could be termed backward should be backward educationally, economically and socially, and it should be inadequately represented in Government services to claim benefits under Art. 16(4).

Parliamentary Debates, 1951 :

In January 1950 the Constitution came into force.

The first case challenging the validity of reservation of seats in *educational institutions* is the one reported in Smt. Champakam case.[24] As reference is already made to the judgment of this case as also to the judgment of the Supreme Court in appeal, the facts of the case need not be repeated here. As a direct consequence of the judgments of the Madras High Court and of the Supreme Court, which found omission of a provision in Article 29 similar to clause (4) of Art. 16, amendment of the Constitution was felt necessary. The meaning of the expression 'socially and educationally backward classes' is clear also from the proceedings of the Parliament. In the course of their speeches in the Constituent Assembly Munshi and Ambedkar used the words "community" and "communities". When in 1951 the Constitution (First Amendment) Bill came in Parliament for discussion, Ambedkar referred to Article 16(4) and said that backward classes are *nothing else but a collection of certain castes*.[25] Though in the course of discussion in the Constituent Assembly relating to reservation of posts under Article 16(4) such a specific statement was not made by Ambedkar, his statement in Parliament in 1951 reflects the intention of both the Constituent Assembly and the Parliament that at any rate, so far as Hindus are concerned, the word 'class' means 'a group of castes'. When the first Amendment Bill was moved in the Parliament some members wanted the word 'classes' to be qualified also by the word economically.[26] Nehru who moved the Bill rejected this amendment saying: "..... but my difficulty is this that when we chose those particular words there, 'for the advancement of any socially and educationally backward classes', we chose them because they occur in Article 340 and we wanted to bring them bodily from there. Otherwise I would have had not the slightest objection to add 'economically'. But if I added 'economically' I would at the same time not make it a kind of cumulative thing but would say that a person who is lacking in any of these things should be helped. 'Socially' is a much wider word including many things and certainly including economically. Therefore, I felt that 'socially and educationally' really cover the ground and at the same time you bring out a phrase used in another part of the Constitution in a slightly similar context'.[27]

The clause similar to Article 16(4), as said before, was not there in Article 15 or in Article 29 in the matter of admission to educational institutions. The omission was intentional. By this we do not mean to say that the Constituent Assembly, much less Ambedkar, did not want reservation in the educational institutions being made in favour of Scheduled Castes, Scheduled Tribes and other backward classes. Perhaps, the Constituent Assembly and Ambedkar felt that in the Chapter relating to the directive principles of State Policy, Article 46 enjoined upon the State to make provision for the economic and educational advancement of the weaker sections. In no part of the directive principles of State Policy

we find it being the duty of the State to secure adequate representation to certain classes in State Services. Therefore, clause (4) came to be specifically incorporated in Article 16. Fundamental rights enumerated in Part III of the Constitution were not considered to be so sacrosanct as not to be circumscribed or limited by any State measures. The duties enjoined on the State by Part IV, which contains the directive principles of State Policy, when implemented would necessarily curtail or limit the fundamental rights. This, perhaps, being the view taken by the Constituent Assembly and Ambedkar, Article 15 and 29 did not originally contain any exception. The other reason why Ambedkar did not introduce an exception clause in Article 15 and 29 was the prevalence of practice in America segregating Negroes from the educational institutions, and the American Supreme Court upholding the constitutional validity of such segregatory laws. It is to be remembered that when the Indian Constituent Assembly was drafting the Constitution, the American Supreme Court had held as not discriminatory the opening of schools separately for the Negroes and denial of admission of Negroes into White Schools. The apprehension of Ambedkar was that if an exception clause similar to Article 16(4) was introduced in Article 15 and 29 the Indian Union and State Governments could open separate educational institutions exclusively for the Scheduled Castes, Scheduled Tribes and the other backward classes, without offending the equality clause contained in Article 15 and 29. That, perhaps, was the reason why Ambedkar did not want a clause similar to Article 16(4) introduced in Article 15 and 29. That this appears to be the reason is clear from the debates in the Constituent Assembly. Article 9(2) of the Draft Constitution was similar to clause (4) of Article 15 of the present Constitution.

In the Constituent Assembly K. T. Shah proposed an amendment to clause (2) of Article 9 of the Draft Constitution for adding the words " or Scheduled Castes or backward tribes, for their advantage, safeguard and betterment ". The object behind such an amendment was stated by K. T. Shah in the following words : " In regard to the Scheduled Castes and Backward Tribes, it is an open secret that they have been neglected in the past; and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek, therefore, by this motion to include them also within the scope of this special sub-clause (2), so that any special discrimination in favour of them may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country ".[28] Ambedkar had to consider the amendment introduced by K. T. Shah but he was of the opinion that the said amendment

was undesirable for the reason that "The object which all of us have in mind is that the Scheduled Castes and Scheduled Tribes should not be segregated from the general public. For instance, none of us.....would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, 'well we are making special provision for the Scheduled Caste'. To my mind, they can safely say so by taking shelter under the Article if it is amended in the manner Professor wants it.[20] The amendment proposed by Professor Shah stood rejected. Perhaps, Ambedkar did not conceive then that the judiciary would invalidate as unconstitutional reservations made in favour of backward classes in the educational institutions, without a specific provision similar to Article 16(4). And it is for this reason clause (4) in Article 15 and in Article 29(2) came to be incorporated by the Constitution (First Amendment) Act, 1951.

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CHAPTER XV

JUDICIAL TREND

Introductory

1. In the earlier parts of this Volume we have dealt with the question relating to the meaning to be given to the expression 'classes of citizens' occurring in the Constitution by applying various rules of interpretation, like the doctrine of *ejusdem generis* rule of context, rule of *pari materia* etc. We have also referred to the historical background under which reservation in favour of certain castes and communities came to be made, and to the debates in the Constituent Assembly and Parliament when Article 16(4) and Article 15(4) came to be inserted. The detailed discussion about the *meaning* of the said expression will, we hope, put an end to the uncertainty caused by the executive and the judiciary.

2. When we became a sovereign democractic republic by giving to ourselves the Constitution on the 26th November 1949, fundamental rights have been granted from 26th January 1950 to every citizen, in particular, in matters of admission to educational institutions and employment in State Services. Some rights guaranteed by Part III of the Constitution are given to individuals irrespective of one's religion, race or caste. The said Part prohibits the State from making any discrimination against any citizen on grounds of religion, race or caste, and guarantees equality before law and equal treatment by the State regardless of one's religion, race or caste. At the same time we should not lose sight of the fact that the Indian society is a very complex one, the development of which is lopsided in all walks of life. There are large sections of the people, who on account of historical reasons, and largely on account of religious and social disabilities imposed upon them, have been subjected to discriminatory treatment and have been denied the opportunities in life for centuries.

3. Certain nations attained political independence after they had secured to their peoples social and economic equality, but we attained political independence when we had still inequalities in every walk of life. The securing of social and economic equality has become the duty of the State. For this purpose we have given to ourselves the Constitution in the present form with a view to have a welfare State to safeguard the interests of those classes who have been neglected all along, and to promote their social and economic interests. The wisdom of the wellwishers of the country is expressed in the Constitution, which contains a system of religious, social,

political and economic morals. Although the Constitution was enacted twenty-five years ago, we have not been able to achieve those ideals, for aught we know that the vested interests have been attempting to perpetuate the existing inequalities. Further, moral growth in a society is a very slow process, and one cannot expect the attainment of those morals in a short time. And in the life of a nation or a society 25 years' time is too short a period. Traces of age-old religious and social attitudes of discrimination and disabilities, and their consequential residues of superstitious beliefs still survive among us.

4. Soon after the Constitution was brought into force in January 1950 successful attacks have been made by the vested interests on the measures introduced by the State in the discharge of their obligations enjoined on them by the directive principles of State Policy. In about a year's time of the commencement of the Constitution, amendments came to be introduced, and by now we have as many as 43 Amendment Acts, each Act changing the phraseology or deleting or adding some provisions. Judicial pronouncements on any particular issue or aspect are not uniform, definite, consistent and certain, and when one looks at the Law Journals every month, one is apt to be bewildered at the large number of rulings either over-ruled or reversed or modified or explained. In some instances executive succumbed to political or communal pressures and ignored the interests of the weaker sections. In this situation we have got to secure the desired social and economic justice to the weaker sections.

5. The framers of the Constitution having realised the existence of inequalities in every walk of life and the existence of many unaided sections in our society thought wise to make provision for the Scheduled Castes and the Scheduled Tribes for their representation in the Legislatures and to make provision for the social, economic and educational advancement of those and other backward classes. This could best be described by quoting the words of three judges of the Supreme Court, namely, Justice Gajendragadkar, Justice Subba Rao and Justice Hegde. " Article 46 which contains a directive principle, provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. *There can be no doubt that the object of making a special provision for the advancement of the castes or communities, there specified, is to carry out the directive principle enshrined in Article* 46. It is obvious that unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally, the ideal of establishing social and economic equality will not be attained, and so, there can be no doubt that Article 15(4) authorises the State to take

adequate steps to achive the object which it has in view. No one can dispute the proposition that political freedom and even fundamental rights can have very little meaning or significance for the Backward Classes and the Scheduled Castes and Scheduled Tribes unless the backwardness and inequality from which they suffer are immediately redressed".[1] "Article 16 is an instance of the application of the general rule with special reference to opportunities of appointments under the State. It lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. If it stood alone, all the backward *communities* would go to the wall in a society of uneven basic social structure; the said rule of equality would remain only a utopian conception unless a *practical content* was given to it. Its strict enforcement brings about the very situation it seeks to avoid. To make my point clear, take the illustration of a horse race. Two horses are set down to run a race—one is a first class horse and the other an ordinary one. Both are made to run from the same starting point. Though theoretically they are given equal opportunity to run the race, in practice the ordinary horse is not given an equal opportunity to compete with the race horse. Indeed, that is denied to it. So a handicap may be given either in the nature of extra weight or a start from a longer distance. By doing so, what would otherwise have been a farce of a competition would be made a real one. The same difficulty had confronted the makers of the Constitution at the time it was made. Calculated oppression and habitual submission reduced a considerable section of our community to a life of serfdom. It would be well nigh impossible to raise the standard with the doctrine if equal opportunity was strictly enforced in their case. They would not have any chance if they were made to enter the open field of competition without adventitious aids till such time when they could stand on their own legs. That is why the makers of the Constitution introduced clause (4) in Article 16".[2]

6. If equality and non-discrimination on the ground of religion, race or caste is to be enforced strictly there can be no stability nor real progress, because the large sections of the society are still living in primitive conditions. They are denied the share in the good things of life, while power and wealth are confined in the hands of a few. Justice K. S. Hegde (as he then was), observed that: "It is dangerous to be blind to the appalling conditions of many sections of people.....unaided many sections of the people who constitute the majority in this State cannot compete with the advanced sections of the people, who to-day have the monopoly of education, and consequently have predominant representation in the Government Services as well as in other important walks of life....We have pledged ourselves to establish a welfare State. Social justice is an important ingredient of that concept....The Preamble to our Constitution reminds us that our goal is to secure to all its citizens,

justice, social, economic and political; equality of status and of opportunity and to promote amongst the citizens of this country fraternity, assuring the dignity of the individual and the unity of the nation. *Advantages secured due to historical reasons cannot be considered as fundamental rights guaranteed by the Constitution.* Nation's interest will be best served—taking a long range view—if the backward classes are helped to march forward and take their place in a line with the advanced sections of the people. Feudalism, in any form whatsoever, is incompatible with democratic way of life".[3]

7. By making reservation in services to backward classes we do not feel that the efficiency of the services would be materially affected. We should remember that in a welfare State the so called efficiency in the services is not the only end in view though its importance cannot be minimised. The general efficiency of the State as a whole has to be measured by the social and educational standard of all classes, and by a proper and equitable distribution of offices among all communities in the State. We need not emphasise here the bad effects of the services if dominated by a few communities. Even so, efficiency as understood by some has been measured solely or mainly by the high academic qualifications or the high percentage of marks secured by the candidates at the examinations. It cannot be denied that there are many aspects which constitute the real merit or the real efficiency of the officers, and those aspects are sympathy and compassion for the weaker sections of the society, honesty of purpose, integrity, energy etc. We do not say that the advanced communities are lacking in those qualities, but they cannot claim a greater share of those qualities than other communities, while their superiority at present, to obtain high academic distinctions and high percentage of marks at the examinations can hardly be questioned. The present system of education and examination suits their interests.

8. The composition of the services in the State by all communities has much influence in the shaping of the policy of the administration. The efficiency of public services should be viewed as a machine for securing the even and uniform progress of the State. The efficiency of the administration would increase, and the progress of the State would accelerate by the presence of officers of all communities. Viewed from the point of view of public services themselves, it is likely that the efficiency of the services will be advanced by promoting a greater feeling of equality among all the officers and by relieving officers of the backward communities of the feeling that their interests are likely to suffer at the hands of the officers of the advanced communities. It cannot be denied or ignored that an officer in the exercise of his executive and quasi-judicial powers or in the discharge of his duties, being given discretion wider than that of a judge, finds it easier to see the virtues of his own community than those of other communities.

9. So, reservation to backward classes is intended in the larger interests of the society and to reduce the social imbalances. In this process the fundamental right to be not discriminated against on the ground of religion, race or caste will have to be curtailed or limited to a certain extent. The scope and extent of fundamental right under Article 16 or Article 29(2) or Article 15 is not absolute. It is subject to the claims of members of the backward classes.

10. The most important, and equally difficult, task lies in the identification of those classes. For this purpose we have got to examine :

(1) the *scope of the government power* in selecting various criteria and the reasonableness of those criteria for determination of the backward classes. This involves the collection of certain relevant material and its application ;

(2) the fixation of the *extent* of reservation, including the *mode* by which such reservation could be effected ; and

(3) the examination of the *power of the judiciary to review* the said action, and its area, scope and extent.

While it is true that a class to be termed backward under Article 15(4) should be backward both socially and educationally, what kind of *tests be* selected for determination of the *social* backwardness of a class and what *standards* be adopted for determination of its *educational* backwardness ?

We should also examine the rulings of the judiciary, and the criteria applied by the President of India and the Parliament in specifying Castes under Article 341 and Tribes under Article 342. The reason is, the expression " backward classes " is a generic term which covers not only the Scheduled Castes and Scheduled Tribes but also other backward classes. After examining first the rulings rendered by the judiciary, right from the one rendered in 1950 to the one rendered in 1975 by the Supreme Court, we shall broadly and generally select the criteria for the purpose of our report. One would realise how difficult and complex the problem is and one would concede that no one can be expected and no one can claim to be competent, to suggest universally acceptable criteria. However, between the extremities suggested by the judiciary at different times we have selected, in the circumstances to be narrated later, and from the vast available material, the criteria that would be quite reasonable and relevant.

References—

1. A.I.R. 1963 Supreme Court 649.
2. A.I.R 1964 Supreme Court 179.
3. A.I.R. 1964 Mysore 132.

CHAPTER XVI

JUDICIAL TREND (*Continued*)

Between 1950 and 1959 :

1. The practice of reserving large number of seats in educational institutions and large number of posts in Government services to backward classes and minorities was prevalent in almost all the States in India. In the extreme North of India—in the State of Jammu and Kashmir—90 per cent of the posts were reserved in favour of ' Backward Classes '. Muslims who constituted about 70 per cent of the population of Jammu and Kashmir State were allotted 50 per cent of the posts, Jamvi Hindus 40 per cent and Sikhs and others the remaining 10 per cent. It was noticed in Jammu and Kashmir that Kashmiri Pandits who constituted only 2 per cent of the State population had practically monopolised all the services in the State.[1] What is true of Jammu and Kashmir State is also true of all other States in India. Brahmins, Baidyas and Kayastas in Bengal held among themselves about 90 per cent of Government posts filled by Hindus, though their population was only 9 per cent of the Hindu population. " Numerous castes are entirely unrepresented in the higher grades of the civil services of the State ".[1-a] In the United Provinces 95 per cent of the posts were held by the five highest castes.[1-b] In the Central Provinces the five highest castes forming only 10 per cent of the Hindu population had held 95 per cent of the Government posts.[1-c] In Bombay Province, the more numerous but middle and lower status castes of Maratha, Lingayat, Mahar etc. did not have a single entry in the Government Officers' post.[1-d] In the Princely State of Mysore, similar was the situation.[1-e] In the extreme South like the Madras State (the present Tamil Nadu) all the seats in educational institutions and all the posts in services were distributed amongst different communities, perhaps, proportionate to their population.[2]

2. In the Old Mysore State, a Princely State, all the castes amongst Hindus, except that of Brahmins, and the non-Hindu minorities like Muslims and Christians totaling about 95 per cent of the State population were treated as Backward Classes. The practice elsewhere appeared to be similar. In fact, whether it was the Jammu and Kashmir State in the North or the Madras State (Tamil Nadu) in the South or the Mysore State (Karnataka), the predominance of Brahmins was uniformly felt, and for reducing their strength, proportionate allotment of seats in educational institutions and posts in Government services for all groups was the rule. That such an arrangement was not challenged before any Court, though there was

a clause in Section 298 of the Government of India Act, 1935, similar to Article 16(1) and 16(2), is evidenced from the absence of any reported case of discrimination against Brahmins.

3. When the Constitution was promulgated in November 1949, bringing it into force from January 1950, there was no clause in Article 29 similar to clause 4 of Article 16. People of Madras took the first opportunity in the year 1950 itself in challenging the continuance of the 'communal Government Order' allotting seats in the educational institutions amongst different communities by filing Writ Petitions under Article 226 in the High Court of Madras. Alladi Krishnaswamy Iyer, a leading lawyer, who was a member of the Constituent Assembly and also the Advisory Committee which appointed the Fundamental Rights Sub-Committee and who took leading part in the discussion on the drafting of various Articles on Fundamental Rights, including the present Article 16, was a counsel for the Petitioner in the said case.[3] The discussions of various points of arguments in the case show that while the Constituent Assembly provided for reservation of posts in services in favour of backward classes on the ground of their *religion, race* or *caste,* the absence of similar provision in Article 29 was not without significance. The Courts inferred that if it was the intention of the Constitution-makers to permit reservation of seats in educational institutions in favour of backward classes on the ground of their *religion, race* or *caste,* a provision similar to clause 4 of Article 16 would have been incorporated either in Article 29 or in Article 15. When the Madras High Court struck down the said communal G.O. apportioning all the seats in the educational institutions to different castes and communities, the State Government took up the matter in appeal to the Supreme Court. The Supreme Court also said, so far as admission to educational institutions was concerned, there was no clause in Article 29 and 15 similar to clause 4 of Article 16 to make reservation in favour of backward classes on the ground of *religion, race* or *caste.* In the Supreme Court also Alladi Krishnaswamy Iyer appeared on behalf of the Petitioner-Respondent.[4]

4. As a direct consequence of the decision of the Madras High Court (and of the Supreme Court) striking down the communal G.O. as being unconstitutional, Parliament in 1951 inserted clause 4 to both Article 15 and Article 29. It is to be noted that Alladi Krishnaswamy Iyer, who was a member of the Constituent Assembly, continued to be a member of the Parliament till the General Election in 1952. From this and from the detailed discussion elsewhere the *meaning* of the expression "Backward Classes of Citizens" was known to all as groups of people associated with their religion, race or caste, and nobody disputed the correctness of the said *meaning*. Even so, the Supreme Court[5] in 1951 specifically said that the expression backward classes meant Harijans (Scheduled

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Castes) and the Backward Hindu communities. It said in unequivocal terms that Muslims and Christians could not be said to be backward classes. From 1950, when the Constitution was brought into force, till about 1959, reservations in favour of backward classes, either in educational institutions or in Government Services, were challenged in the High Courts of Madras, Punjab, Mysore, Jammu and Kashmir and Andhra Pradesh, as could be seen from the reported cases.[6] In none of these reported cases the meaning of the expression " backward classes " was doubted or challenged and the Bench and the Bar rightly proceeded on the basis that a " backward class ", in the context, meant a group of people associated either with their *religion, race* or *caste.*

5. Whether the judiciary had the power of review of the executive action taken by the Government either under Article 15(4) or 16(4) was a doubtful question, and the power of review was not expressly asserted by the judiciary. However, when a challenge was made as to the validity of the Notification issued by the President under Article 341 by a Harijan convert to Christianity, the Madras High Court[7] held that it was clear that the President had not arbitrarily specified the castes in the Schedule and that it was " not open to Courts to sit in judgement over his decision ". Similarly, when reservation made under Article 16(4) was challenged in the Mysore High Court[8] although the Government had determined the backward classes about 24 years back, the Court declined to review the said Order holding that " the Government is the sole authority ". This shows that in so far as the specification of Scheduled Castes, Scheduled Tribes and Backward Classes was concerned, the Madras and the Mysore High Courts declined to exercise the power of judicial review. The High Courts of Punjab[9], Jammu and Kashmir[10] and Andhra Pradesh[11] did in fact review the executive action of the Government taken under Article 15(4) or 16(4), but those Courts did not expressly state so. However, the *scope* and *area* in which the Jammu and Kashmir[12] and Andhra Pradesh[13] High Courts exercised that power was very much limited. The Jammu and Kashmir High Court following the ruling of the Supreme Court in Venkataramana[14] case disapproved of the action of the Cabinet taken against removing " the communal disparity " in the Departments. The Andhra Pradesh High Court exercised the power of review only in suggesting the method or the mode by which reservation under Article 15(4) was to be given effect to.[15] The Punjab High Court[16] also exercised the power of review in an extremely limited way under circumstances which have now become obsolete to the testing of reservation of seats in educational institutions in favour of Scheduled Castes when clause (4) was not there in Article 15 and Article 29.

6. Till 1959, in no Court, not even in the Supreme Court, the questions as to the *meaning* of the expression " backward classes ", the *scope* of Article 15(4) and 16(4), the criteria in the determination

of *social* backwardness and *educational* backwardness, the *tests* to be applied and their *nature,* the *material* to be collected and its *nature,* the *extent* of permissible reservation, the *ambit* of fundamental rights, the *burden of proof* of the constitutionality of the action, the *authority* to specify the backward classes etc., were ever raised. For the first time in 1956 the Mysore High Court[17] held that clause (4) of Article 16 was an exception to Article 16(1) and 16(2) and that only a 'small portion' of the posts could be reserved for backward classes. And the Andhra Pradesh High Court[18] held that the provision in Clause (4) of Article 15 is a 'special provision'. As respects the ambit of the fundamental rights under Article 15 and 16, the Supreme Court[19] held that the Directive Principles of State Policy contained in Article 46 cannot override the fundamental rights, that the fundamental rights were sacrosanct and that therefore there could not be a breach of the fundamental right except to the extent provided in the 'Chapter relating to the Fundamental Rights', that the Directive Principles should conform to and run as subsidiary to the fundamental rights, that the directives cannot override the fundamental rights and that the fundamental rights are inviolable, but in giving effect to Article 46 a balance could be struck between the fundamental right and the directive principle. The High Court of Andhra Pradesh merely stated that Article 15(4) *abridges* the fundamental rights but it did not suggest the *extent* to which the fundamental rights under Article 15 or under Article 29(2) could be abridged. Similarly, the Supreme Court in the said case did not suggest the way in which a balance could be struck between Article 15 and Article 46 when abridging the 'inviolable' and 'sacrosanct' fundamental right contained in Article 15 and 29. But the dissenting judgment in the Madras Full Bench case[20] and the judgment of the Punjab High Court[21] held that the directive principles contained in Article 46 *permitted* reservation to backward classes in educational institutions and that Article 46 should be read as '*exception* to Article 29(2)'. Now that clause (4) is inserted both in Article 15 and 29, the observations in the dissenting judgment of the Madras case and the judgment of the Punjab case, though correct, have become obsolete.

Between 1960 and 1962 :

7. If the Madras High Court could be the cause for the First Amendment of the Constitution which inserted clause (4) to Article 15 and 29(2) to bring them in line with clause (4) of Article 16, the Mysore High Court could claim the credit for causing the Supreme Court to the rendering of ruling in Balaji case[22] which is acclaimed by many as a *locus classicus* on Backward Classes. The tenancy with which the people of Mysore fought the Mysore Communal G.O. is, indeed, remarkable and the exhibition of such tenacity is not without reason. And it is not far to seek the reason.

8. Almost every conceivable argument on Article 15(4) and 16(4) was first raised in the Mysore High Court. As said before, all Hindu castes excepting the Brahmin caste and all non-Hindu religious minorities like Muslims and Christians, comprising as large a population as 95 per cent, were treated as Backward Classes in the Old Mysore State. Inspired, and obviously gaining confidence, by the ruling of the Supreme Court in Venkataramana case[23] to the effect that the fundamental right under Article 16(1) and (2) being sacrosanct and inviolable and could not be abridged or taken away, the people of Mysore made an attack with greater vigour on the communal G.O. in the Mysore High Court in the year 1956 in Keshava Iyengar[24] case when seven posts of Munsiffs out of 10 were distributed amongst backward classes. Although in this case (Keshava Iyengar case) the Mysore High Court held that clause (4) of Article 16 was an exception to Article 16(1) and (2) and that reservation of posts to Backward Classes could be only ' a small portion ', it justified the allotment of seven posts to backward classes out of 10 holding that the seven posts had been allotted to seven different backward communities, and so, one post to each community was ' a small portion ' out of 10 available posts. Added to it, the ruling and observation of the High Court was that " for 10 appointments to be filled up, if there are candidates belonging to 10 Backward Classes of citizens who, in the opinion of the State are inadequately represented in the service, it will not be wrong for the State to allot all the appointments to the ten candidates coming under the heading ' backward classes of citizens '. A member belonging to a class which is well represented in a particular service cannot have, and should not have, any grievance as against such appointments."

9. " Communities which are well represented in services should not expect a place for themselves in each selection of appointments when there are backward classes of citizens which are inadequately represented in services and when the appointments to be made are limited. With good grace they must make room for their less fortunate brethren ".

10. It is explicit from this judgment that the one community, which was considered to be advanced and which was ' well represented ' in the services, namely, that of Brahmins, was expected to be out of service without grievance and with good grace for an indefinite period, until all other castes and communities secured representation in services adequate to their population. The said decision is tantamount to totally nullifying the fundamental right guaranteed to every citizen by Article 16(1) and (2). Perhaps, this observation of the High Court necessarily provoked the ' well represented community ' in Mysore Services. The ' well represented community ' was alerted of the disastrous and dangerous consequences

that would befall it if the said communal G.O. was not destroyed and the decision of the High Court was not effaced.

11. The said decision (in Keshava Iyengar case) was rendered just a year before the present State came to be re-organised with the integration of areas of 5 different States. In the other four integrated areas, the lists of backward classes varied as respects the population each list covered, the number of castes and communities each list embraced and as respects the extent of reservation. In other words, the population of backward classes in each of the other four integrated areas was not as high as 95 per cent, as it was in the Old Mysore area, and the extent of reservation too was not that large. Further, certain castes and communities which were treated as backward classes in Old Mysore area were not treated so in the other integrated areas. To bring out a uniform list of backward classes for the entire newly reorganised State, the Government issued in 1958 an Order by which all castes amongst Hindus except the Brahmin caste and all non-Hindu minority communities like Muslims and Christians in the said four integrated areas were declared as backward classes, as was the case in the old Mysore area.

12. Earliest opportunity was taken to challenge the validity of this Government Order in the High Court and the same was struck down when the Government conceded the imperfectness of the said Order. So, in 1959 the Government again issued an Order, this time excluding, besides the Brahmins, the Baniyas and Kayastas (Kshatriyas). By the second G.O. all the castes and communities which were declared as backward classes were divided into 14 groups, each group being allotted a certain percentage of seats in educational institutions. In substance the Government Order of 1959 was similar to the one which was quashed by the High Court in 1958. These two Orders of 1959—one specifying all castes and communities except Brahmins, Baniyas and Kshatriyas as backward classes and the other dividing all those castes and communities into 14 groups and allotting a certain percentage of seats to each of such 14 groups also came to be challenged in the Mysore Court[25] in Ramakrishna Singh case.

13. This case is illustrative of the stubborn Government exhibiting its 'sole authority' in the determination of backward classes, and the determined judiciary taking a firm step for the first time in extending, wide and deep its long arms of review of State actions taken for the benefit of the "so called backward classes". The High Court assumed to itself, first of all, the indefinable power of review, and then while examining the nature of the special provision from angles not hitherto examined by any Court in India, found certain policies and objects of the Constitution and the prohibitions and limitations imposed on the State by Article 15(4).

14. It found that clause (4) of Article 15 in its entirety was an exception to the whole of clause (1) and that Article 15(1) prohibits discrimination on the ground of religion, race, caste etc., and any action which discriminates against a citizen on the ground of religion, race or caste was violative of Article 15(1), unless such discrimination could be justified under clause (4). In other words, there could be discrimination under Article 15(4) on the ground of religion, race or caste abridging to a very limited extent the fundamental right under Article 15(1). "The Scheduled Castes and Scheduled Tribes form a part of the socially and educationally backward classes of citizens" and the other backward classes cannot be determined by comparing them with the 'most forward communities'. The policy and object of the Constitution being to help the really socially and educationally backward classes, the Court was entitled to see whether the executive had exceeded the limits of the power conferred on it by Article 15(4), and question its action in that regard. It held that it can see whether the communities mentioned are really backward classes, whether the provision made for them was constitutional, whether the determination of the backward classes was based on any intelligible principle or it was arbitrary and whimsical or whether it was wholly unintelligible, and whether the State had disobeyed the constitutional prohibition. For that purpose the Court could examine whether in the determination of backward classes there was any intelligible basis. After subjecting the G.O. to the rigours of those tests and finding a number of infirmities and the inclusion of forward communities in the list, and all fault with the Government, the Court declared that the Government had committed fraud on the power conferred on it by the Constitution. Though the denoting of 95 per cent of the population as backward was disapproved of, it did not state as to the permissible limit to be treated as backward, and though 65 per cent of the seats were reserved in favour of Scheduled Castes, Scheduled Tribes (20 per cent) and Other Backward Classes (45 per cent), the Court did not refer to that aspect at all and did not suggest as to what extent the fundamental right under Article 15(1) could be abridged. While dealing with the educational backwardness, it held, the bare literacy test was the *only* possible test and the Engilsh literacy test was not proper. Even so, it further held that the 1941 Census, which contained the statements as to the attainment of various castes and communities in vernacular literacy and in English literacy, could hardly be taken as the basis in 1959 and that principle was not intelligible since considerable changes had taken place between 1941 and 1959. The Government Order did not indicate, nor was there anything on record to show, what test or principle was applied as to the *social backwardness* of those castes and communities. Before a caste or a community could be regarded as a backward class, it should be backward both "socially and educationally".

15. After referring to Articles 12, 338, 340, 154 and 162, it held that the specification of backward classes by the President was not a condition precedent for the Government to take action under Article 15(4) and that the executive of a State could specify the backward classes in the absence of Presidential specification. In regard to the mode of effecting the reservation, the Court held that the allotment of certain percentage of seats to each of the 14 groups of backward classes 'abridged' the rights of the backward classes.

16. On the striking down by the High Court of the said two Orders of 1959 the Government appointed the 'Mysore Backward Classes Committee' in January 1960, popularly known as the 'Nagana Gowda Committee', which submitted its "Interim Report" in February 1960, pending detailed investigation and collection of data. The Government, accepting the interim recommendations, issued an Order treating very few castes and communities as backward classes and reserving 'a small portion' of 22 per cent of the seats in educational institutions for them, besides 15 per cent for Scheduled Castes and 3 per cent for Scheduled Tribes. Though it was unexpected, the validity of even this Order was, surprisingly, challenged in the Mysore High Court[26] in Partha case. Attacks more or less similar to the ones made in Ramakrishna Singh[27] case but with less vigour were made in this case also on the Government Order. The Interim Report had stated that the backwardness was judged on the basis of literacy in the caste or community and its representation in services. The population of castes and communities had been inflated to 1959 on the basis of 1931 and 1941 Census figures. It is to be remembered that the High Court had held just the previous year that the literacy test was the only possible test, and so the Committee adopted the extent of literacy in a particular caste or community as the basis for determining its backwardness. The Court held that the specification of backward classes 'by' caste and community was 'not open to attack', that Article 15(4), being exception to Article 15(1) and (2), was in the nature of a restraint on fundamental right, that it being a special provision should be within the strict limits of exception, and that the special provision should not exceed the ambit of exception so as to operate either to abridge or take away the fundamental right. Article 15(4) comprises two ideas, one, 'classifying' citizens as socially and educationally backward classes was concerned, clause (4) of Article 15 had a relevance to the idea of equality and non-discrimination adumbrated in clause (1) and (2), and, two, so far as the making of special provision for the advancement of the socially and educationally backward classes was concerned, it had relevance to the ambit of restraint which could lawfully be placed. The Court resorted to the principles of Article 14 for testing the reasonableness of classification. Clause (4) of Art. 15 being a special provision for the educational advancement of backward classes, whose advancement is a directive to the State,

reservation could be made by way of permissible abridgement of the fundamental right under Article 15(1) and 29(2). The inflating or the estimating of literacy percentage of castes and communities from 1941 Census was earlier disapproved of by the High Court in Ramakrishna Singh case, but in this case it held that such inflating or estimating of the literacy figures was 'more rational'. The Court accepted the bare statement made by the Committee in its Interim Report without expecting its proof as to the Committee's satisfaction that the castes and communities recommended by it had the student strength below state average of 0.76. It differed also from the previous ruling on the point of literacy test and said that it cannot be "the only test". As to the nature, relevancy and adequacy of data, the Court said that inflating of literacy percentage and population of castes "cannot be said to be utterly unreliable".

17. The Government Order had stated that the seats unfilled by candidates belonging to Scheduled Castes and Scheduled Tribes should go to the candidates of other Backward Classes. Though not referring to the Andhra Pradesh case it held that the mode of effecting reservation in that way amounted to compartmentalization which was not permissible, because it would abridge the fundamental right of the members of the general category. Applying, obviously, the doctrine of severability the Court invalidated only that part of the order which permitted transferring of unfilled seats to the Backward Classes, while validating the specification of backward classes 'by' castes.

18. In 1961, on the submission of the Final Report by the Nagana Gowda Committee, Orders were issued by the Government treating about 90 per cent of the population as backward, including Scheduled Castes and Scheduled Tribes and reserving only 30 per cent of the seats or posts in favour of 'Other Backward Classes', though the Committtee had recommended 50 per cent, besides 15 per cent and 3 per cent in favour of Scheduled Castes and Scheduled Tribes respectively. In 1962, the 1961 Order fixing 30 per cent in favour of other backward classes was superseded by an Order fixing 50 per cent, ignoring its own earlier decision that fixing of such large percentage for backward classes was not in the larger interest of the State.

This time the action of the Government, both in specifying the backward classes and in fixing 50 per cent of reservation for them, was challenged not in the Mysore High Court, as had been done althrough before, but in the Supreme Court under Article 32, to which a reference will be made by us after referring to an important ruling of the Supreme Court rendered a few months before in General Manager vs. Rangachari case.[28]

19. The ruling of the Supreme Court was as to the scope and ambit of the provisions of Article 16(4) in the making of reservation

to any backward class of citizens which was not adequately represented. Article 335 expects the State to take into consideration the claims of the members of the Scheduled Castes and Scheduled Tribes in services. Pursuant to its directive reservation had been made for them in *promotional* posts. The Supreme Court described the *Scheduled Castes and Scheduled Tribes as socially and educationally backward classes.* Article 338(3) includes the other socially and educationally backward classes of citizens in the definition of Scheduled Castes and Scheduled Tribes. The Supreme Court equated the express on " backward classes " with " backward communities ". That this is so is evident from its majority and minority judgments. It is to be noted that the Supreme Court observed that " Article 16(4) is in the nature of an exception or a proviso ", nay, it went further and said that it was a *non obstante* clause. The proviso or an exception should not be interpreted to destroy the fundamental right itself in the sense that reservation should not go to the length of reserving all appointments or posts, nor to the length of reserving a *majority* of them, if when done, it would mean complete destruction of the fundamental rights guaranteed under Article 16(1) or it would make Article 16(1) practically illusory. It was held that Article 16(4) was not an exception to the whole of Article 16(1), thus disapproving of the decision of the Mysore High Court.[29] In other words Article 16(4) in the context, is an exception to Article 16(1) on grounds of religion, race or caste, and so too Article 15(4) an exception to Article 15(1) and 29(2) on the ground of religion, race or caste.

20. The judgment of the Supreme Court was rendered in April 1961 and in the face of the observation that reservation should not be for majority posts which would make the fundamental right illusory, the Mysore Government in 1961 increased the reservation from 48 per cent to 68 per cent. While challenging the validity of the reservation of the majority seats (68 per cent) in educational institutions, the basis adopted in 1961 in specifying and enumerating the socially and educationally backward classes was also challenged[30] in Balaji case. The judgment in this case has got to be read in the light of all the earlier rulings rendered by the Mysore High Court and also the one rendered by the Supreme Court just the previous year, to properly understand it. Government had specified the socially and educationally backward classes of citizens ' by ' castes and communities and the specification of castes and communities was not disputed before the Supreme Court. What was disputed was the basis i.e., the principle adopted in specifying and enumerating the said castes and communities. It was contended, that while so specifying and enumerating the castes and communities as socially and educationally backward classes of citizens the *principle* adopted was unintelligible and irrational and so it was inconsistent with and outside the provision of Article 15(4). It was also contended that the *extent* of reservation was unreasonable and extravagent. In

paragraph 20 of the judgment the Court referred to Articles 15(4), 335, 338(3), 341 and 342 and said that the *meaning* of the expression socially and educationally backward classes of citizens was the same as Scheduled Castes and Scheduled Tribes and that so far as the backwardness of the socially and educationally backward classes of citizens was concerned, it was comparable with the backwardness of Scheduled Castes and Scheduled Tribes, and that the other socially and educationally backward classes were similar to the Scheduled Castes and Scheduled Tribes. However, it said that some of the socially and educationally backward classes may be somewhat less backward than the Scheduled Castes and Scheduled Tribes. This means that even amongst the socially and educationally backward classes, while some castes and communities might be comparable to Scheduled Castes and Scheduled Tribes in the matter of their backwardness, some other castes and communities might not be that backward. The problem that confronted the Supreme Court was not about the meaning of the expression, but about the *scope* and *ambit* of the said expression. While dealing with the scope and ambit of the expression " backward classes " it said that the backwardness of a class, meaning a caste or community, must be both social and educational. The determination of *social* backwardness of classes of citizens (castes and communities) cannot be determined *on the sole basis* or the *lone principle* of the *status* of that caste or community in the hierarchy of castes, though the low status of a caste or a community in the hierarchy connotes inferiority. The acceptance of the bare principle of status in the hierarchy (caste) would make many castes and communities claim for inclusion in the list of backward classes. If the *caste* of a caste or a community was made the sole or the dominant test, it might be alright in the case of Hindu community, but that principle of caste viz., the principle of superiority and inferiority of status, is inapplicable in relation to non-Hindu communities like Muslim, Christian, Jain and Lingayat, who do not have *castes* with their groups. The principle of *caste* was bound to break down in their case. According to the Supreme Court, Article 15(4) is a proviso or an exception both to Article 15(1) and Article 29(2) and the exception would be on the non-discriminatory grounds mentioned in Article 15(1) and 29(2). As has been held by it regarding Article 16(4) in General Manager case, Article 15(4) too cannot be an exception to the whole of Article 15(1)(2) or the whole of Article 29(2). It is an exception to Article 15(1)(2) or 29(2) on the ground of *religion* or *race* or *caste* only. It said that that position was not and cannot be in dispute. Having held that Article 15(4) was an exception to Article 15(1) and 29(2), on the ground of religion, race or caste, it said, in some States groups amongst Muslims and Christians might be backward socially. For that purpose the Supreme Court suggested certain tests for the ascertainment of *social* backwardness so as to be applicable to Hindu castes and non-Hindu groups alike, for, the acceptance of the

principle of *status* only has the effect of excluding *in toto* communities like Muslims and Christians. Therefore, to cover Hindu castes as well as non-Hindu groups it suggested the test of economic poverty of a caste or a non-Hindu group for determining its *social* backwardness. To determine the economic poverty of a Hindu caste or a non-Hindu group it suggested the occupation test and the habitation test, for *aught* we know that the majority of the Hindu backward castes and the non-Hindu backward groups are following some occupations which are conventionally known to be inferior and are residing in *rural* and *isolated* areas. The Court said, because of this the problem of backward Hindu castes and backward non-Hindu groups was a problem of rural India. Throughout its judgment, the Supreme Court has used the expression 'classes of citizens or 'groups of citizens' as meaning those castes and groups referred to by it in paragraph 20. The Mysore Government adopted the *principle of caste* to determine the *social* backwardness not only of Hindu castes, but also of Muslims and Lingayats, which, in the opinion of the Supreme Court, was not permissible. The other infirmity the Court found was that Article 15(4) authorised the State to make a special provison and that special provision being in the nature of an exception it was not exclusive in character. That an exception cannot completely exclude the rest of the society, and when so done, the fundamental rights guaranteed by Article 15(1) and 29(2) are completely and absolutely ignored. The Order which adopted the principle of high and low for the determination of social backwardness of castes and communities was intended to be relative to include any caste or community as backward in relation to the most advanced ones. If such a relative test was adopted, as was done by the Committtee and the Government, all except the most advanced castes and communities would be covered by the application of that principle. The reason why the Supreme Court criticised the Order was that it embraced 90 per cent of the population by applying the relative backwardness of castes and communities.

21. Referring to the test applied by the State in determining the *educational* backwardness of castes and communities, it disapproved of taking the last three standards in the High Schools. Again, assuming that, that test was a reasonable one the inclusion of all the castes and communities whose student average was just the same as, or slightly below, the State average was not proper. According to it, the student average of a caste or a community should be well below the State average. As to the authority to determine and specify the backward classes, it held that for implementing the beneficial measures, the executive of a State may also specify and enumerate them, though the President of India who was required to specify them under Article 338 had not done so. Nor was it necessary that there should be a legislative enactment. The Court, while it dealt with the validity of the executive action of the Mysore Government assumed the power of review and after carefully

scrutinising the said action, held that the presence of all those infirmities in the Order amounted to a fraud committed by the State on the power given to it by Article15(4). It disapproved of the classification of the list of Backward Classes into two categories. It also disapproved of taking literacy as the relevant test for determining the *educational* backwardness of castes and communities. One important observation which has not been given due significance by the Governments and the subsequent Benches of the Supreme Court is that the special provisions under Article 15(4) are intended for *classes of citizens* and not for *individuals* as such.

Between 1963 and 1975

22. After the judgment in Balaji case tirades have been carried on in almost all the High Courts against reservation to backward castes and communities on the ground that the Supreme Court in Balaji case invalidated reservation on communal grounds. The observation of the Supreme Court that on the sole basis of caste social backwardness of castes and communities cannot be determined had been interpreted to mean that backward classes cannot be specified " by " castes and communities. Some Courts have read certain words into the judgment in Balaji case which are not there. The said judgment came to be considered and interpreted soon after its pronouncement by the Kerala High Court.[31]

23. Kerala Government had issued an order, after the judgment in Balaji case, declaring Ezhavas, Muslims, Latin Catholics, Backward Christians and Other Hindu castes as constituting the 'Other Backward Classes' reserving 13 per cent, 9 per cent, 3 per cent, 1 per cent and 9 per cent respectively to each of those categories. When the validity of it was challenged, the High Court said that it was not open to the State to be subjectively satisfied about the backwardness of any class, though it is not necessary that the Order should disclose any reasons. But, if relevant materials and circumstances existed, the Court could feel satisfied about the test. When an attempt was made to justify the said order as a reasonable classification under Article 14, the Court held that in the determination of backward classes under Article 15(4), Article 14 had no application. The reliance by the Government on the statements contained in old treatises on castes and tribes was not satisfactory to the Court.

24. This judgment of the single judge was reversed by the Division Bench holding that the burden of proof lies on the Petitioner who alleges infringement under Article 15(4), that social backwardness contributes to educational backwardness and the educational backwardness perpetuates social backwardness and that both social and educational backwardness are inevitable corollaries to the extreme poverty and the deadening weight of custom and tradition

and that in these regions of human life and values the clear-cut distinctions of cause and effect merge into each other. The judgement of the single judge was reversed validating the Government Order.[32]

25. The extent of reservation made under Article 16(4) came up for consideration again before the Supreme Court in Devadasan case.[33] The majority judgment placing reliance on its judgment rendered in Balaji case said that reservation should not exceed 50 per cent of appointments to be made in a *particular year* and the method of carrying forward the unfilled seats in the reserved quota for the third year when the reservation in that year would exceed 50 per cent of appointments to be made in a *particular year* and the dissenting from that decision the minority judgement said that the expression 'nothing in this article' in clause (4) of Article 16 is a legislative device to express its intention in a most emphatic way that the power conferred thereunder is not limited in any way by the main provision but falls outside it. Clause (4) of Article 16 has not really carved out an exception but has preserved a power untrammelled by the other provisions of the Article. It said that the State is at liberty to make *any provision* for reservation of appointments or posts. That once a class is a backward class the question whether it is adequately represented or not is left to the *subjective satisfaction* of the State. As regards the mode of reservation the minority judgment said the reservation of appointments can be made in different ways. " It is not for this Court to describe the mode of reservation ". Explaining the judgment in Balaji case the minority judgment said that the doctrine of 'discrimination' of the fundamental right depends upon the *entire cadre* strength and the percentage reserved out of that strength. The expressions used in the observation in Balaji case viz., " generally ", and " broadly " show that the observations were intended only to be a workable guide but not an inflexible rule of law even in the case of admissions to Colleges.

26. On the striking down of the Mysore Government Orders specifying and enumerating castes and communities on the *sole basis of caste* and fixing the reservation at 68 per cent on the basis of the recommendations made by the Nagana Gowda Committee, the Mysore Government purporting to be mainly guided by the decision of the Supreme Court in Balaji case issued an Order as a *temporary measure* taking a family as a unit for purposes of Article 15(4), and its economic condition and occupation. It said a family of cultivators or artisans or petty businessmen or individuals in inferior services engaged in occupations involving manual labour with less than 1200 rupees income per annum are considered to be backward classes. On the question of educational backwardness the Order proceeded on the basis that *it was well known* that the general level of education and literacy was lower among the poorer sections of

the people especially amongst agriculturists, artisans, petty businessmen, persons in inferior services and persons following occupations involving manual labour. The Order further stated that the problem of determining who are socially and educationally backward classes is a very complex one. An elaborate investigation and collection of data and examination of such data which would inevitably involve considerable length of time may be desirable. *Pending such elaborate study* and investigation of the problem the Government issued the said Order.

27. When the validity of the said Order was challenged in the High Court of Mysore[34] in Vishwanatha case, to a contention raised, the Court said that the State should not fold up its hands till an exhaustive enquiry is made and the data collected. In other words, it held that the State was competent to take " interim decisions ". It also held that unaided sections of the people constitute *majority* in Karnataka State and further " the merit theory " should not be over-emphasised. An argument was advanced that the taking of a family or an individual as a unit and adopting the test of occupation and economic income, which the Government Order did, was " devised to tilt the scales against the students coming from the Brahmin community. The Government was charged with malafides ". To show that the Order was not intended by the Government to tilt the scales against the Brahmin community the Court collected the figures of students who were admitted to the Engineering Colleges. Out of 936 seats, 307, about 1/3 of the filled up seats, had gone to the Brahmin community which constituted 4.28 per cent of the population and of these 307 seats 22 seats were taken by the Brahmin community on the ground of occupation and economic income of individuals. To the arguments against the Order that the specification of the backward classes should be " by " castes and communities, that the expression 'classes of citizens' has acquired a judicial interpretation and that the word " classes " is synonymous with castes in so far as Hindus were concerned and that the scheme of taking a family or an individual as a unit had not helped the really backward classes and that in the present context of the constitutional provisions and the various rulings the adoption of a family or an individual as a unit was unconstitutional, the Court agreed that caste in relation to Hindus was a relevant, nay, an important test and that the scheme adumberated in the Order was very *imperfect*. Nevertheless the Court said that it was bound by the decision of the Supreme Court in Balaji case. However, since the scheme was intended as a temporary measure pending elaborate study and investigation the court observed " I earnestly hope that the State will make a more appropriate classification least its bonafides should be questioned". As things stood, the Court did not strike down the Order. The High Court did not justify it under Article 15(4), though the Supreme Court in Balaji case had stated that the validity should be justified

according to the provisions of Article 15(4) itself. But the High Court justified it as a *reasonable classification under Article* 14. The fact remained that it did not uphold the validity of the Order under Article 15(4).

28. In the said case some other Orders had also been challenged but the Court did not strike them down. Some of the aggrieved petitioners preferred an appeal to the Supreme Court in Chitralekha case.[35] The validity of the Government Order relating to the so called backward classes was not challenged in appeal before the Supreme Court. Its validity or otherwise was not argued either by the appellants or by the respondents. What was contended was that the observation of the High Court " but I earnestly hope that soon the State will make a more appropriate classification " taking the test of caste into consideration " lest its bonafides should be questioned ", besides other tests, was not supported by the decision in Balaji case and that the said observation was in conflict with the observation made in Balaji case.

29. The Supreme Court said that "we do not intend to lay down any inflexible rule for the Government to follow. The laying down of criteria for ascertainment of social and educational backwardness of a caste is a complex problem depending upon many circumstances which may vary from State to State ". But it made certain observations applying the juxtaposition rule that ' classes ' was not equated with ' castes '. The judges had ' hastened ' to make clear the observations in Balaji case. One important aspect of this case is that Supreme Court did not justify the said order of ' classifying ' the families or individuals as backward as a valid classification under Article 15(4).

30. The minority judgment stated that clause (4) of Article 15 contained a *non-obstante* clause with the result that the power conferred by the clause can be exercised despite the provision (1) of Article 15 and clause (2) of Article 29.

31. The Patna High Court[36] also came to interpret the judgment in Balaji case when a licence to open a shop for the sale of Ganja and Bhang was to be issued. The Government had directed that, other things being equal, preference should be given to the members of the Scheduled Castes and Scheduled Tribes. The Court held that the giving of preference to a Scheduled Caste member in the matter of grant of licence was a provision under Article 15(4) and that the clause is not an independent or substantive enactment and that it is not permissible to interpret the said clause in a way as to destroy the meaning of fundamental right guaranteed under Article 15(1). The granting of the licence to sell Ganja and Bhang to a member of Scheduled Caste violated or abrogated the fundamental

right of members of the other communities, and so the Government direction was quashed.

32. The Patna High Court, in another case,[37] struck down the Order of 1952 which had made reservation of seats for backward classes in Medical College on the ground that the Order amounted to making discrimination on the sole ground of caste, without, however, discussing the merits either way. The reason assigned by it was that the judgment in Balaji case did not approve of specification of backward classes ' by ' castes and communities.

33. The tirade against specifying castes and communities as backward had spread to Andhra Pradesh after the judgment in Balaji case and the Government Order in that behalf was struck down in 1963.[38] The Government subsequently issued an order similar to the one that was struck down by the High Court and the same came to be challenged.[39] Since the Government had not collected any material, nor had any material been placed before the Court, the said second Order was also struck down. Against the said judgment the State preferred an appeal to the Supreme Court.[40]

34. Having seen how the judgment in Balaji case had been misinterpreted or incorrectly interpreted by some of the High Courts and even by the Supreme Court itself in later cases, the Supreme Court in this case had to explain the meaning of the term *class* in the following way : " In the context in which it occurs the expression class means a homogeneous section of the people grouped together because of certain likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, *race, religion* and the like. In determining whether a particular section forms a class, *caste cannot be excluded altogether* ".

35. This observation was necessitated because of the trend the Governments, the High Courts and later the Supreme Court had taken in saying that the word ' class ' was not synonymous with ' caste '.

36. In the Triloknath case[41] arising from Jammu and Kashmir which had treated Muslims as a backward class, Jamvi Hindus as a backward class including the Dogras, the Sikhs and others as a backward class, comprising about 93 per cent of the population, with reservation of 90 per cent, the Supreme Court did not say that those communities and castes did not constitute classes nor did it say that reservation to the extent of 90 per cent was unreasonable and extravagant. It merely stated that the issue of backward classes was a justiciable one, at the same time stating that the *opinion of the State in that regard may ordinarily be accepted as final* except when it is established that there is an *abuse of power.*

Though no material was placed before the Supreme Court, though it was admitted by the State that the population of 93 per cent comprising Muslims, Hindus, Sikhs and others was treated as backward and the reservation was to the tune of 90 per cent, the Court did not exercise the power of review, perhaps, because the opinion of the State in that regard was to be accepted as final. Nor did it find any abuse of power. Inspite of its ruling in Balaji case the Supreme Court did not find anything wrong with the said scheme of Jammu and Kashmir Government. It laid down two conditions as far as Article 16(4) was concerned, namely, a class of citizens should be backward i.e., socially and educationally in the sense explained in Balaji case and the said class is not adequately represented in services under the State. The Supreme Court remitted the case to the High Court of Jammu and Kashmir for recording evidence.

37. In the face of these conflicting rulings of the High Courts and of the Supreme Court, the Patna High Court[42] had to consider the meaning of the word 'class' in a Full Bench case. When a challenge was made before it, as to whether the Government's determination of a caste (Mallahs) as one of the backward classes was justified or not, the Court was constrained to say, having considered the rulings of the High Courts and the Supreme Court referred to above, that '*the Court can take judicial notice of the notorious fact. that they (Mallahs) are both socially and educationally backward*'. It said the word 'advancement' in clause (4) of Article 15 is not subject to any qualification, and that, 'the decision of the State Government to the effect that a particular class or caste is soically and educationally backward will prevail, subject of course, to the right of a party to satisfy the High Court that the test of backwardness adopted by the Government was based on irrational or irrelevant grounds' thus placing the burden of proof on the party challenging the validity of the Government Order.

38. Madras is no exception.

As the Mysore Government Order was attacked directly in the Supreme Court under Article 32, the Madras Government Order specifying in 1951 the socially and educationally backward classes was also challenged in the Supreme Court under Article 32,[43] in Rajendran case.

39. The Madras Government had listed the Backward Classes in the year 1906 and the said list was kept up-to-date making necessary arrangements therein. The 1906 Order specified the backward classes 'by' castes. After the striking down of the communal G.O. by the Madras High Court in Champakam case and the striking down of the list of backward classes, in part, by the Supreme Court in Venkataramana case, which held that backward classes in Article 16(4) meant the Scheduled Castes and the backward Hindu communities, the Madras Government examined the 1906 Order and

specified only some castes as socially and educationally backward classes. The Madras Government had not undertaken any investigation nor had it placed any material before the Supreme Court in justification of the list of castes which were treated as backward classes. The Supreme Court in this case placed the burden on the petitioners of showing whether any caste mentioned in the list was not educationally and socially backward. It held that " though the list is prepared caste-wise, the castes included therein are as a whole educationally and socially backward and therefore the list is not in violation of Article 15 ". It observed " it must not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of Art. 15(4)."

40. We find in these cases the Supreme Court making an attempt to correct its rulings rendered earlier and also those of the various High Courts to mean that 'class' is equated with 'caste'. The Jammu and Kashmir High Court, as directed by the Supreme Court submitted the case for decision by the Supreme Court after recording the evidence. In that case the Supreme Court[44] said " the members of an entire caste or a community may in the social, economic and educational scale of values at a given time be backward and may on that count be treated as a backward class, but that is not because they are members of a caste or a community but because they form a class ". In the earlier cases it equated *class* with *caste* and in this case it equated *class* not only with *caste* but also with *community*. The Jammu and Kashmir Government Order of reserving about 90 per cent of the posts in favour of Muslims constituting about 70 per cent, and the Hindus and the Sikhs constituting more than 25 per cent was struck down, not on the ground that the Government treated such a large population as backward nor on the ground that it made unreasonable and extravagant reservation of 90 per cent of the posts, but on the ground that the scheme amounted to " distribution of posts community-wise ".

41. The Bombay High Court[45] also came to interpret the judgment in Balaji case. The Maharashtra Government had treated the following castes and communities as backward classes :

(i) Scheduled Castes and Nava Buddhists converted from Scheduled Castes;

(ii) Scheduled Tribes including those outside specified areas;

(iii) Denotified Tribes and Nomadic Tribes; and

(iv) Other Backward Classes.

42. Certain percentage of reservation was made separately to each of those four categories of backward classes. The High Court relied on the affidavit made by an Officer of the Government as to the social and economic conditions of the castes, the Report of the Backward Classes Commission appointed by the President of India and other Reports. It said " although the Government has not implemented its (the Report of the Backward Classes Commission appointed under Article 340) recommendations, perhaps, in view of the number involved, the Court can take judicial notice of its contents under Section 57 of the Evidence Act as it is a report submitted by a Commission appointed under Article 340 of the Constitution and as such, a matter of public history and a document of reference". The castes and communities enumerated by the Maharashtra Government as backward classes were described by the President's Commision also as Backward Classes.

43. As respects the manner or the mode of effecting reservation, it validated the transferring of the unfilled seats from one group of backward classes to any of the other groups, and above all it upheld the sub-division of the backward classes into four groups as intended to facilitate the allotment of seats separately to the four groups so that " comparatively brighter students in one group may not keep out the students of the other groups."

44. While the Supreme Court in Balaji case criticised the extent of reservation holding that " we cannot overlook the fact that in meeting that demand standards of higher education in Universities must not be lowered ..... It would be against the national interest to exclude from the portals of our Universities qualified and competent students on the ground that all the seats in the Universities are reserved for weaker elements in society," later, another Bench of it[46] answered the said crticism that " undoubtedly we should not forget that it is against the immediate interest of the nation to exclude from the portals of our Medical Colleges qualified and competent students, but then the immediate advantages of the nation have to be harmonised. With its long-range interests it cannot be denied that unaided many sections of the people in this country cannot compete with the advanced sections of the nation. The *advantages secured due to historical reasons should not be considered as fundamental rights.* Nation's interests will be best served—taking a long range view--if the backward classes are helped to march forward and take their place in line with the advanced sections of the people." This case re-affirmed its decision in P. Sagar case[47] that " caste cannot be excluded altogether ". It also approved of the ruling of the Bombay High Court[48] that the words " classes of citizens " are associated with their origin, race or religion and further held that the executive action under Article 15(4) was open to judicial review.

45. As to the burden of establishing that a particular reservation made under Article 16(4) is offensive to Article 16(1) the Supreme

Court[49] placed the burden on the person who challenged the reservation. The mere fact that the reservation made may give extensive benefits to some of the persons who have the benefit of reservation does not by itself make the reservation bad. Reservation of appointments under Article 16(4) cannot be struck down on the hypothetical grounds or on imaginary possibilities. *He who assails the reservation must satisfactorily establish that there has been violation of Article* 16(1).

46. Although the Supreme Court struck down certain reservations as being unconstitutional, some of the State Governments were attempting to circumvent the law laid down by it. One instance which came to the notice of the Supreme Court was from Jammu and Kashmir[50] Inspite of the striking down of reservation to the extent of 50 per cent for Muslims and 40 per cent for Jamvi Hindus and 10 per cent for those including Kashmiri Pandits, the Jammu and Kashmir Government effected promotions pursuant to its earlier communal policy.

47. Though the Mysore Scheme of 1963 was originally intended to be a *temporary measure,* and inspite of the observation of the Mysore High Court that that Scheme was a *very imperfect* one, that caste was a relevant, nay, an important criterion and that if the State Government did not soon make an appropriate classification its bonafides should be questioned, the Government did not make any investigation and did not collect the data until 1972 when a new Government appointed our Commission. The said scheme of taking occupation and income of an individual for determining his or her backwardness had not helped the real backward classes was again reiterated by the Mysore High Court[51] wherein the Court observed "at this stage, we are constrained to observe from the facts revealed in the several cases for Medical College admissions that came up before us for decision that the special reservation made for the socially and educationally backward classes under the Government Order (of 1963) has given wide scope for its abuse, in that, the advantage of reservations has been taken away by candidates whose claims do not appear to be bonafide, to the detriment of genuine backward class candidates ".

48. The Supreme Court[52] having realised that the judiciary was taking courses which were not chartered by the provisions of the Constitution, had to deal with all the aspects of the matter and consider its earlier rulings as also of the High Courts. That all this confusion and indefiniteness originated on account of the ruling of the Supreme Court in Balaji case was felt not only by the members of the Bar but also by the Supreme Court. What appeared to have caused dissatisfaction, uneasiness and discontentment with the Governments and also the judiciary was about the observation of the Supreme Court in Balaji case in paragraph 20 of its judgment

that the Backward Classes for whose improvement special provision is contemplated to be made by Article 15(4) are comparable to Scheduled Castes and Scheduled Tribes in the matter of their backwardness. When an argument was advanced before it[53] that the ruling of the Supreme Court to that effect in Balaji case required re-consideration, it said, in the case on hand "factually the classes enumerated as backward classes are really socially and educationally backward". It explained the principles laid down by it in some of the earlier cases. It said : "it must be pointed out that none of the above decisions lay down that social and educational backwardness must be exactly similar in all respects to that of the Scheduled Castes and Scheduled Tribes". In the Balaji case, the test of student population in VIII, IX and X Classes (last three classes in the High School) was considered to be high. But in this case it approved of taking the student average in the X and XI Classes. The Court in Balaji case disapproved of the recommendations of the Nagana Gowda Committee made without collecting the material. In this case no material was placed before the Court and only a bare statement in the Report of the Commission that material had been collected by it was accepted as sufficient by the Court. In Balaji case, the Court did not approve of treating those castes and communities as educationally backward whose student average was equal to or somewhat below the State average, but in this case it approved of instances where the educational average was above the State average. The Court found justification in accepting the castes and communities which had the educational average above the State average on the ground that when such castes and communities are grouped together along with those castes and communities which were below State average, the average of the entire group worked out to be less than the State average. Though the Court in Balaji case struck down the Government Order, when it had taken caste as the sole basis, in this case it accepted the basis of caste. The estimation of population of castes and communities on the basis of 1921 and 1931 Census figures was also justified. Finally, in matters in respect of which no material of any kind was obtainable, the personal knowledge of the Commission on those matters was accepted. Above all, the Report of the Commission did not contain the figures relating to population, student average, representation in service, economic income etc., of any single caste or community, but the Commision's bare statement as to their social and educational backwardness was accepted by the Court.

49. The distribution of seats amongst the four reserved classes in proportion to their population was also accepted as against its own ruling in Balaji case. As regards the one important aspect which related to the manner of giving effect to the reservation under Article 15(4), it said that the seats secured by candidates belonging to the backward classes on merit should not count against the quota reserved for them.

50. Almost all the State Governments had adopted the *principle of caste* in the specification of backward classes covering large population, in some instances exceeding 95 per cent. We noticed that the actions of many State Governments were criticised and struck down by the Supreme Court and also by the High Courts. We also noticed that to overcome the rigid tests suggested in Balaji case many Governments adopted dubious and invidious method of misinterpreting the said judgment and highlighting certain words and expressions out of their context to extend benefits under Article 15(4) to the very communities which were, in the opinion of the Supreme Court, forward. Noticing that even the High Courts had adopted similar ways in upholding such actions of the State Governments, the Supreme Court in later cases tried to explain or clarify its earlier ruling in Balaji case by equating 'class' with 'caste'.

51. When this process of retracing its steps was taken by the Supreme Court some of the Governments extended the benefits again to the advanced communities who were residing in hill areas, rural areas, and who were political sufferers and so on, without mentioning whether such reservations were made under Article 14 or under Article 15(4). However, when those actions were challenged, the Governments sometimes took resort to the reasonable classification permissible under Article 14 and sometimes to Article 15(4).

52. The State of Uttar Pradesh had made reservations, *inter alia,* to candidates from rural areas, hill areas and certain division in its State. Though the Order by which reservation was made had not stated that they were backward classes such a contention was raised for the first time in the High Court and the Court accepted the same. The reason given by the Allahabad High Court[54] is "the reservation in respect of candidates from rural areas, hill areas and Uttarkhand division has been stated to be because the citizens of those areas formed the socially and educationally backward classes of citizens. This, in our opinion, is undeniable from the point of view of education in medicine because in this State there are only six Medical Colleges, each one of which is situated in a Municipal Town". In this case backwardness is determined on the ground of absence of a medical college.

53. The Jammu and Kashmir Government treated, again under the pretext of being guided by the ruling in the Balaji case, large number of occupations and individuals as backward. When questioned, the Supreme Court[55] held that occupations and individuals cannot be considered to be backward classes. While dealing with that aspect the Court said agricultural labourers, bearers, waiters, book-binders, cooks, grass, sellers, hawkers, pedlars, load carriers, old garment sellers, watch repairers, grocers in rural areas, milk sellers in rural areas, vegetable sellers in rural areas, drivers of tongas and other animal driven vehicles were not backward classes. It also held that pensioners were not backward classes, holding that

all such persons formed artificial nature of groups. So far as " bad pockets " were concerned, the Supreme Court justified the benefits being extended to people residing in those pockets under Art. 14, when that point was not seriously debated at the Bar.

54. But the very Order of the Uttar Pradesh Government which had treated the rural hill and Uttarkhand areas as backward areas making reservation for residents of those areas came to be struck down once by another Division Bench of the Allahabad high Court[56] and again by a Full Bench.[57] The judgment of the Allahabad High Court came to be considered by the Supreme Court[58] in appeal. With utmost respect to the Supreme Court we express our inability to follow the said judgment in appeal.

What emerges from this is that the topic on Backward Classes has been the subject of much, but not quite adequate, debate. The action of the executive has received criticism at the hands of the judiciary some times more than what the executive deserved.

The above study of the various rulings of the judiciary showed that the executive, the bar and the bench experimented with the *Backward Classes* in their effort to secure justice to them. It pains us deeply to say that even 25 years after the establishment of the Supreme Court the various controversies have not been settled once and for all. The cause of our Commission is likely to suffer from the handicap that, although we are all certain that we are fighting to secure social justice to the Backward Classes, many of our people are not clear in their minds about the exact nature of the classes for the removal of whose backwardness the founding fathers of our Constitution provided for making of special provision.

Ask any number of intelligent men what they understand by the expression *Backward Classes,* there will be answers so different from one another that there seems to be hardly any common basis at all. When a kitten has played with the thread, many knots are formed, and it goes difficult for any one to trace its ends. In the same way many have attempted to give meaning to the expression *backward classes,* sometimes by ' intelligent ' persons and sometimes by simple minded persons, in a way that suited the interests of their caste or community. The mental obliquity of such a person is reflected in his opinion in one form or the other. Sometimes underneath the camouflage of opinions of an idealistic society, the inclination of his mind towards the interests of his community may be noticed concealed in the use of artistic and elastic expressions.

Definitions do not help us greatly. A mischievous way of discouraging or disheartening a hopeful man with a zeal for public good is to subject him to define a series of expressions. The reason is that the term *backward classes* is little understood in its fullness.

The principle of communal representation in legislatures, public services and educational institutions goes back many decades in our constitutional, statutory and administrative history and appears in a multitude of documents and court judgments. Of late, opinions sometimes have been expressed by some that our Constitution does not provide for reservation on communal grounds. We would regard these opinions as tainted by fallacious reading of the constitutional provisions, because their correct interpretation would adversely affect the vested interests. With utmost respect to the Hon'ble Judges of the Supreme Court and the High Courts we have shown that little guidance can be derived from judicial pronouncements, since, for every carefully reasoned expression of one point of view an equally cogent argument on the other side can be found. Our approach is not to dispute, but to achieve the synthesis to make a sense out of the divergent points of view now found in the judicial judgments on Backward Classes.

What is the meaning of the expression *Backward Classes* appearing in Article 15(4), Article 29(2) read with Article 15 (4), Article 16(4), Article 338 and Article 340 ? Whether the expression *classes* means groups of people associated with their religion, race or caste, or whether it means groups of individuals forming artificial classes ? While giving meaning to the expression *class* appearing in those Articles, we applied the doctrine of *Ejusdem Generis* or which is sometimes called)the rule *of Noscuntur a sociis,* the rule of context, earlier rulings of the judiciary which have given meaning to the expression *class* before the Constitution was enacted, the debates in the Constituent Assembly and proceedings of Parliament, previous history, earlier constitutional documents and the analogous provisions where the language is similar. The judiciary in the matter of interpretation of certain other statutory terms has applied the said rules of interpretation, but unfortunately in the matter of giving meaning to the expression *Backward Classes* it has ignored to apply any of those rules of interpretation.

The judiciary is not consistent, or we should say, it is not definite about the relevancy of facts to be taken into consideration while determining the criteria for backwardness. Similarly, it is not definite as to what facts would be sufficient to make the criteria acceptable. Some of the High Courts and the Supreme Court in some cases have held on different occasions that for the purpose of ascertaining the *social* backwardness of classes of citizens, the economic poverty of that class should be the dominant test. And to find out its economic backwardness further tests have been suggested by the judiciary like the test of occupation, the test of residence and the test of *caste* (i.e., *status* of that group in the hierarchy) in relation to Hindu groups. The judgment of the Supreme Court in Balaji case is acclaimed by the judges of the Supreme Court and of the High Courts as a *locus classicus* and the said judgment has always been either followed or

relied on by the High Courts, and in later cases by the Supreme Court. In their efforts to explain the judgment in Balaji case, the judges have on many aspects departed from the observations and findings in Balaji case, thus confusing the issues. While it could be rightly said that the judgment in Balaji case is a *locus classicus* the tests suggested in Balaji case cannot have universal application, and each one of the tests is bound to break down when applied in relation to some classes of citizens. While it is true that the Supreme Court in Balaji case was right in saying that the test of *caste,* i.e., the test of *status* of that caste, is bound to breakdown in relation to Muslims, Christians, Jains and Lingayats, who do not have *castes* in the conventional sense known to Hindu society, the other tests suggested in Balaji case, like the economic backwardness, which again is the result of a class following an inferior occupation or a class residing in some inaccessible area, are bound to break down in relation to some groups. There are certain non-Scheduled castes and communities whose economic backwardness is relatively more, compared with the economic standard of some of the Scheduled castes like the sweepers and scavengers. The residence test also is bound to break down because sweepers and scavengers do not reside in rural and inaccessible areas, for aught we know that their services are essential only in cities and towns. Again, the Supreme Court seems to have lost sight of the existence of certain communities in Indian society which do not follow any traditional occupation in the production of national wealth or rendering service to the community at large. For instance, the begging, the wandering and the criminal tribes have no fixed place of habitation and they have no known traditional occupation, and consequently they have no income in the sense it is understood in economics. How could the test of economic backwardness, the test of occupational backwardness and the test of habitation be made applicable to those castes and tribes ? The begging, wandering and criminal tribes do not belong necessarily to Hindu community, and those tribes may belong to Muslim or Christian community. The test of *caste* is also not applicable to them uniformly. Therefore, the tests suggested in Balaji case are not only incapable of universal application, but they are not exhaustive. It could be argued, as has been said in Chitralekha case, that such castes and communities should find a place in the list of Scheduled Castes or Scheduled Tribes. But, the history relating to the Scheduled Castes and Scheduled Tribes shows that it is only the Hindu untouchable castes that can find place in the Schedule under Article 341 and it is only the tribes that reside in jungles and hills that can find place in the Schedule under Article 342.

Perhaps, the Court in Chitralekha case thought that castes and communities which are extremely backward and whose backwardness is comparable with that of the Scheduled Castes and Scheduled Tribes could not form the 'other backward classes' and that they should find place either under Article 341 or under Article 342. With respect,

we say that this opinion is incorrect. On the coming into force of the Constitution in January 1950, the President was empowered by Art. 341(1) and Art. 342(1) to issue public Notifications specifying therein certain Castes and Tribes, as the case may be. By reading Article 341(2) and 342(2), it is clear that the lists of Scheduled Castes and Scheduled Tribes prepared by the President on the coming into force of the Constitution were not exhaustive and that there were other castes, tribes and communities in existence who could be included in the public Notification by Parliamentary law. Castes and communities that happened to find place in the Presidential Notifications under Article 341 and Article 342 in January 1950 have acquired vested rights, and the representatives in Parliament of those notified castes and tribes do not permit the expansion of the lists, because the interests or the privileges they secured in January 1950 got themselves converted into vested rights and they are not prepared to share the privileges with the other deserving castes and communities. The representatives in Parliament of the non-Scheduled communities also do not wish the expansion of the lists of Scheduled Castes and Scheduled Tribes. For this statement of ours the reason is not far to seek. By inclusion of more castes and tribes in the Schedules the population of Scheduled Castes and Scheduled Tribes would necessarily increase, and the quantum of reservations in the State Legislatures, Parliament, State services and educational institutions would, necessarily, increase in proportion to their population, which cannot be done without the reduction of the strength of the general seats or posts in the State Legislatures, Parliament, State services and educational institutions. When no member of Parliament is prepared to act to the detriment of the interest of his community, should other deserving communities be left in the lurch? Therefore, the suggestion made in Chitralekha case does not appear to be practicable, besides the decision being constitutionally incorrect.

Regarding the *educational* backwardness of castes and communities, Supreme Court in Balaji case said that the Mysore Government should not have taken the educational standard of castes and communities at the last three classes in the High School. According to it the standard should not be as high as that. It said that to assess the educational advancement of castes and communities the bare literacy standard was invalid. However, the Mysore High Court held that the *only standard* to know educational level of castes and communities is the literacy standard. But the Supreme Court in other cases has accepted Matriculation as the proper standard. The literacy of a person is decided by asking that person to write—not a sentence, not a word, but—an alphabet which he chooses to read. Mysore High Court has said that literacy is the *only* relevant standard to know the educational attainment of castes and communities. On this aspect also the Government are labouring as to what standard would be acceptable by the judiciary as a reasonable one. Any

standard adopted by the State would necessarily conflict with the other standards suggested by the judiciary, and consequently it may not hesitate, in a given case, to strike down the executive action by applying the other contrary rulings.

Supreme Court in Balaji case said that the educational level of a *caste* or a *community* should be less than 50 per cent of the State average and Article 16(4) says that there shall be adequate representation to every backward class. The adequacy of respresentation means representation of that community in State services proportionate to its population. In India there are thousands of castes and communities. In Mysore there are large number of extremely backward communities, more backward than the most backward Scheduled Castes and Scheduled Tribes, the population of each such community varies between 2000 and 3000. If 150 or 200 persons amongst each such community are literates or half a dozen pupils are attending the High School the whole community is said to be *educationally* advanced. According to Supreme Court if a caste or a community is educationally not backward, though socially extremely backward, it cannot claim the benefit under Articles 15(4) and 16(4). The reason assigned is that backwardness under Article 15(4) is not just educational nor just social, but it is both educational and social. Again, when the educational standard is held to be a proper one, should the level be less than 50 per cent of the State average ? There are certain castes and tribes whose educational level is above the State average yet finding place in the Schedule under Article 341 or 342. Therefore, the test of educational standard and level of attainment looked at from any angle is bound to break down. Similarly, there are communities in our State, as said before, the population of each of such communities is about 2000, and who are extremely backward. The total percentage of Government employees in relation to the State population is less than 1 per cent. If twenty persons belonging to any of those extremely backward minor communities are to get the lowest posts of clerks in State services, that community could be said to be adequately represented in services, and if it is in the list of Scheduled Castes or Scheduled Tribes it deserves to be excluded. By that, could it be said that that caste is socially and educationally advanced ? Therefore, adequacy of representation on the basis of population to determine its backwardness also cannot be made applicable uniformly.

Article 16(4) provides for reservation not only in State services but also in Central services to Backward Classes. The President has specified the Scheduled Castes and the Scheduled Tribes. By Article 340 the President was required to appoint a Commission for the determination of Other Backward Classes, so as to enable him to specify them under Article 338. Articles 15(4) and 16(4) refer to the making of special provisions to Backward Classes. It was contended in Balaji and other cases that in view of the fact that the President is required to specify the Other Backward Classes, their

specification by the State was outside its power. But, the Courts said that although the President has not specified the Other Backward Classes the State could specify them. By the absence of Presidental specification of Backward Classes there can be no reservation to Other Backward Classes in Central Services. Though the argument that it is the President who alone is empowered to specify the Backward Classes was well founded, the Courts did not accept the contention. It is not unlikely that the determination of backward classes by the State Government could be challenged again, and the Supreme Court would strike down the action of the Government.

It was argued in some cases that the Backward Classes cannot be specfiied by an executive Order, but they could be specified only by the Legislature. Refrring to Article 12 in which the word 'State' has been defined the Supreme Court said that 'State' includes not only the Legislature but also the executive. If by such reasoning, the executive could be said to have the power of determining the backward classes, it could as well be said that Local Bodies like the Municipalities and Panchayats which are also included within the definition of 'State' could claim to have the power of determining the Backward Classes. Would the judiciary uphold the exercise of such a power by a Municipality or a Panchayat ?

Supreme Court in Balaji case said that the Mysore Government had treated as large a population as 90 per cent as backward and thereby indicated that the population of Backward Classes should not be that large. But the Jammu and Kashmir Government had treated Muslims who constitute about 70 per cent, and Dogra Hindus and Sikhs who constitute about 23 per cent as backward, totalling about 93 per cent of the State population. But the Supreme Court did not make any observation as to how the Jammu and Kashmir Government could embrace such a large population within the ambit of Backward Classes.

Whether Clause (4) of Article 15 (and 29) and Clause (4) of Article 16 which enable the State to make special provision for backward classes could be considered as exceptions to the main clauses of equality, or should they be considered as proviso or *non obstante* clauses ? No doubt, the judiciary has held that clause (4) of Article 15 and clause (4) of Article 16 are exceptions but it is not specific in its opinion that exception could be on the ground of *religion, race* or *caste.* It is possible to argue that the expression " nothing in this Article " appearing in Article 15(4) and Article 16(4) is a *non obstante* clause, in which event the said two clauses cannot be considered to limit the reservation below 50 per cent, or the manner in which reservations could be effected.

The Directive Principles of State Policy contained in Part IV of the Constitution do not consider reservation of posts and appointments in State services in favour of Backward Classes as one of the

obligations of the State. Article 335, however, makes it incumbent upon the State to take into consideration the "claims" of the Scheduled Castes and Scheduled Tribes in the matter of appointment to State services. The expression *Backward Classes*, though not defined in the Constitution, has been explained in Article 338(3), by which it is clear that the expressions Scheduled Castes and Scheduled Tribes include the *Other Backward Classes*. It is clear that under Article 16(4) the claims of the Backward Classes cannot be ignored by the State in matters of appointment to services. Therefore, whether Article 16(4) should be considered as a provision which puts the claims of the Backward Classes superior to the fundamental rights enshrined in clauses 1 and 2 of Article 16 ?

Article 15(4) read with Article 29(2) refers to the reservation of seats in educational institutions to be made for Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes. This provision could be given effect to by implementing the Directove Principles of State oPlicy adumbrated in Article 46. The question is whether the Directive Principles of State Policy could be said to over-ride the fundamental rights guaranteed under Article 15, and if so, whether the fundamental right could be abrogated ?

Now, coming to the mode of reservation. If a student or a candidate belonging to a Scheduled Caste, Scheduled Tribe or to a Backward Class secures a seat or a post in his own right in the merit pool, should that seat or post count against the reserved quota meant for the aggregate of all the Scheduled Castes/Tribes or the aggregate of Backward Classes ?

If the determination of Backward Classes either under Article 15(4) or 16(4) cannot be justified under either of the two Articles, could such determination be justified under Article 14 as a reasonable classification ? With utmost respect to Mysore High Court we say that the ruling in Viswanatha case on the 1963 Government Order of Mysore purporting to be one issued under Art. 15(4), justifying it not under Article 15(4) but under Article 14, is incorrect, and consequently the ruling of the Supreme Court in Chitralekha case upholding the judgment of the Mysore High Court rendered in Viswanatha case is also incorrect. The "classification" which is permissible under Article 15(4) and 16(4) of the Constitution is not law as defined in Article 13. The determination of Backward Classes and the provision to be made for them under Article 15(4) and 16(4) are intended to achieve the object of the Constitution as enshrined in the Preamble, Article 46 and Article 335 but they are not intended to achieve the object of a law. Therefore, the judgment in Viswanatha case and the judgment in appeal of the Supreme Court in Chitralekha case are incorrect. In our opinion the constitutional validity or otherwise of the specification of backward classes under

Article 15(4) or 16(4) has got to be decided with reference to Article 15(4) or 16(4) itself, and not with reference to Article 14.

Constitution has provided that the extent of reservation to Scheduled Castes and Scheduled Tribes in the State Legislatures and Parliament should be proportionate to their population. Should the State restrict the population of backward classes including that of Scheduled Castes/Tribes only to an extent not exceeding 50 per cent, because the judiciary has put a ceiling of 50 per cent on reservation of seats in educational institutions and posts in Government services ? The argument that could be advanced, that the population of Backward Classes cannot be more than 50 per cent of the State population is bound to break down in respect of some States. There are certain States in the Indian Union like the Laccadives, Minicoy and Amindive, Dadra and Nagar Haveli and Nagaland where the population of Scheduled Tribes *alone* is as large as 97 per cent.

If reservation exceeding 50 per cent in educational institutions and Government services would encroach upon the fundamental right of citizens to an unreasonable extent, could there be reservations in State Legislatures and Parliament in favour of Scheduled Castes and Scheduled Tribes exceeding 50 per cent ? *Prima facie* the answer would be that there could be such reservation exceeding 50 per cent in Legislatures, as the political rights are not fundamental, they being only statutory ones. But the omnibus equality clause of Article 14 can be said to be violated if the Legislature makes reservation in favour of Scheduled Castes and Scheduled Tribes exceeding 50 per cent. There are Legislatures like Meghalaya where the reservation in favour of Scheduled Tribes alone is 80 per cent. Reservations of seats for women, Scheduled Castes and Scheduled Tribes in the Municipal Councils and Panchayats have been made by Legislative enactments in pursuance of the policies contained in Article 15(3) and 15(4). When political rights are not fundamental rights, could there not be hundred per cent reservation for those groups on those Councils ? In such circumstances it is to be seen how the judiciary would react. However, it has not been challenged before the judiciary about the reservation to such a large extent made in favour of Scheduled Tribes in the State Legislature of Meghalaya.

The Supreme Court in Balaji case said in relation to Mysore that there could be no plurality of lists of Other Backward Classes, In other words, there could be only one list of Backward Classes and there cannot be sub-classification of Backward Classes into 'Backward' and 'More Backward'. But, later, in the case arising from Andhra Pradesh the Supreme Court upheld the sub-classification of Backward Classes into four separate groups. Similarly, the Bombay High Court.

On the question as to the presumption of the constitutionality of an action taken under the provisions of the Constitution, the judiciary has wandered hither and thither. Mysore High Court in Vishwanatha case declined to interfere, rather precluded itself from testing the constitutional validity of the Scheme on the so called backward classes on the ground of presumption of constitutional validity of such actions. But in some other cases the judiciary ignored the said presumption, and insisted upon the Government to prove the constitutional validity.

In some cases the judiciary placed the burden of proof of certain facts on the person who challenged the constitutional validity of the Government Order relating to Backward Classes and in some other cases it shifted the burden on the Government.

Sometimes the judiciary expected the executive to produce evidence which was not in existence and it expected the executive to undertake Census containing caste particulars. While it is the accepted policy of the Central Government to do away with caste enumeration in the Census, the judiciary declined to rely upon the estimated population figures of castes ascertained from the old Census Reports. But in a case from Tamil Nadu the Supreme Court accepted the population figures ascertained as far back as 1901.

If the Central Government, in spite of the insistence by the judiciary, does not undertake caste enumeration in the next Census, it is not unlikely that the enumeration of Scheduled Castes, Scheduled Tribes and religious communities in the Census would be challenged as violative of Article 14. Article 341, 342 and other provisions provide for the inclusion in or exclusion from the list of Scheduled Castes and Scheduled Tribes, and for the enumeration of Other Backward Classes. How could there be the ascertainment of the exact population of the Other Backward Classes if the Census Reports omit castes? On what ground the Central Government justifies the enumeration of only the Scheduled Castes/Tribes and religious communities in Census Reports? Would it not be violative of Article 14 on the ground of arbitrariness or on the ground of discrimination or *mala fide*? Is not the judiciary alive to the practical difficulties under which the State Governments and the Commissions are labouring in the matter of such data? Should not the judiciary take a practical view of the problem, instead of reducing it to legal quibbles?

Judiciary has assumed to itself the power of review of the executive action taken under Article 15(4) and 16(4) in respect of the *Other Backward Classes.* The Presidential Notifications issued under Article 341 and 342 specifying Scheduled Castes and Scheduled Tribes are also in exercise of the executive power by the President. They are 'notifications' amounting to law as defined in Article 13,

and so, the Presidential Notifications issued under Articles 341 and 342 could as well be the subject of judicial review. The observation of the Mysore High Court in Partha case to the effect that the Schedules under Article 341 and 342 are part of the Constitution is incorrect. If the power of review is available to the judiciary, should the judiciary except the President and the Parliament to apply similar tests as are suggested by it to be applied in the determination of Other Backward Classes ? We know of no Committee or Commission having ever been appointed to suggest the criteria, except the Government applying the sole criterion of untouchability in the case of Scheduled Castes, and residence in hills and jungles in the case of Scheduled Tribes. Would a single criterion be held to be sufficient to justify the enumeration of castes and tribes under Articles 341 and 342 ? Would the judiciary insist upon the executive to satisfy itself about the social, economic, residential and other backwardness in relation to Scheduled Castes and Scheduled Tribes as it expects in the determination of Other Backward Classes ? The reason why we said so is that the expression " Backward Classes " is a generic term which includes the Scheduled Castes, the Scheduled Tribes and other Backward Classes. Article 16(4) of the Constitution uses the expression ' Backward Class ' and it does not use the expressions ' Scheduled Castes ' and ' Scheduled Tribes '. Therefore, in the determination of the Scheduled Castes and Scheduled Tribes for purposes of Article 16(4) the judiciary could as well claim to have the power of review of the Presidential and Parliamentary specification of Scheduled Castes and Scheduled Tribes. But the Madras High Court did not expect the application and proof of such tests. The expression ' Anglo-Indian community ' is not found in Article 16(4) and the said expression is not included within the meaning of ' backward class '. How was it that till 1960 posts and appointments were reserved for that community in certain services and how is it that such reservation was not challenged in any Court ? Was not such reservation violative of Article 16(1) and (2) ? The possible argument that Article 336 provided for such reservation cannot hold good in the view of the Madras High Court and of the Supreme Court in Champakam case.

If, as claimed by it, the judiciary has the power of review of every executive action under Article 15(4) and 16(4), what is the *scope* and *extent* of judicial review, and what is the *area* in which it could exercise the power ? No doubt, the judiciary having held that clause 4 of Article 15 and clause 4 of Article 16 are in the nature of exception, the extent of reservation should not be more than half. According to the judiciary the fundamental rights guaranteed to every citizen under Article 15(1) (2) and Article 16(1) (2) are sacrosanct in their character and that those rights should not be curtailed or restricted to an unreasonable extent. Again, the expression " reasonable extent " though very vaguely used would mean that the reservation should always be less than 50 per cent to

hold the curtailment of the fundamental right within the permissible limits. If there is no unreasonable encroachment on the fundamental rights there can be no complaint by any one about the tests applied for the determination of backwardness. Therefore, the scope of review would be available to the judiciary only when the extent of reservation is so large as would encroach upon the fundamental rights beyond the permissible limit of 50 per cent. There can be no judicial review when the State makes reservation to the Backward Classes, including Scheduled Castes and Scheduled Tribes, the extent of which is less than 50 per cent, no matter who are held by the State to be Backward Classes. But, even in cases where the executive had prescribed reservation below 50 per cent, the judiciary has stretched its long arm to review the executive action of determining who were Other Backward Classes. Here again, the scope of judicial review is not that long and wide as to enter upon a field, which in our opinion, is exclusively reserved to the subjective satisfaction of the executive.

If the judiciary could claim to have the power of review in the matter of determination of Backward Classes what is the ***exact area*** in which it could exercise its power ? Social backwardness is an abstract thing, and it is a matter upon which the executive or the legislature alone can take a decision. When a decision is taken by the executive or the legislature based on the findings of a Commission, such as ours, could the judiciary venture to set aside the findings of facts ? We noticed instances where the judiciary had entered into that arena also.

The judiciary has failed to apply the doctrine of severability uniformly in all cases. While in Balaji case arising from Mysore, the Supreme Court declined to apply the doctrine of severability, and struck down the Government Order in its entirety, in a case arising from Jammu and Kashmir, where the population of Muslims is about 70 per cent, it did apply the doctrine of severability. Again, in Balaji case arising from Mysore where the reservation was more than 50 per cent the Supreme Court not only struck down the Government Order but held that it was a constitutional fraud on the part of the Mysore Government to have exceeded the limit of 50 per cent reservation.

After the ruling of the Supreme Court in Balaji case a similar case arose from Jammu and Kashmir where the reservation in favour of Muslims, Dogra Hindus and Sikhs was to the extent of 90 per cent. There, the Supreme Court did not refer to its earlier ruling in Balaji case. However, we are of the opinion that so far as the *Backward Classes* are concerned, in the context of the constitutional provisions relating to those classes, the Courts should be less prepared to exercise the power of judicial review of executive actions

if based on recommendations of Commissions, which are fact finding bodies.

From the brief review of the principles laid down by the judiciary relating to Backward Classes, it is clear that the Courts have created a situation in which it is impossible to apply any test without the risk of the executive action being again struck down, because it is possible that the judiciary may extend the scope of review indefinitely.

The nature of the process by which the present situation has arisen is due to the use of obscure terminology, like extraneous considerations, reasonableness and so on. Judiciary has found outside the words of the Constitution criteria which it is rarely prepared to state in precise terms, but depends upon its own free judgment in the particular circumstances of each case, and in some instances, upon the making of undisclosed assumptions. Again the vague principles stated by the judiciary impose no fetters on its own discretion and give to the lawyer virtually no possibility of predicting the action which the judiciary will take in particular instances.

Constitution has not limited the power of judicial control. That power has been extended far beyond in its effort to have control over executive actions. The excessive exercise of judicial power appears to be on the ground that the Constituent Assembly did not foresee that the judiciary would arbitrarily exercise that power.

One last word.

It is interestingly revealing that our Supreme Court, rightly describing itself as the sentinel of Fundamental Rights, constituted itself into Benches with larger and largest number of judges when the Ruler of a Princely State complained of violation of his right to receive millions of rupees from the Consolidated Fund of the State Exchequer, or when the share-holders of the nationalised major banks complained of inadequacy of compensation or when the head of a religious institution asserted the fundamental right to acquire and hold unlimited extent of agricultural lands. In such cases acres of paper and rivers of ink were employed and arguments were heard for weeks and months. Hundreds of authorities, dictionaries, treatises—both Indian and foreign—debates in the Constituent Assembly, resolutions of political parties, speeches of leaders and earlier constitutional documents were cited before the Supreme Court. Judgments were over-ruled, and the over-ruling judgment came to be over-ruled.

In the Princes' case before it, the Supreme Court invoked the doctrine of *ejusdem generis* to give meaning to the expression " other

person ", which followed the specific words " Ruler ", " Prince " and " Chief ", as meaning either a Ruler, a Prince or a Chief. But it has not invoked the said doctrine of interpretation to give meaning to the expression " other classes " which is surrounded by specific words like 'caste', 'tribe' and 'community' in Article 15(4) and Part XVI. in particular Article 338(3).

We hope the confusion and indefiniteness created by the conflicting, inconsistent, vague and contradictory judgments on *Backward Classes* will be cleared by the judiciary once and for all so that the States could devise plans with definiteness and certainty for the social and economic improvement of the hitherto neglected backward classes. We accordingly recommend to the State Government to request the President of India for making a reference to the Supreme Court under Article 143 for resolving all the controversies.

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CHAPTER XVII

FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

There have been conflicts between the fundamental rights and the directive principles in the implementation of the measures contained in Part IV. The conflicts that arose came up time and again before the judiciary for decision as to whether the Directive Principles over-ride the fundamental rights and *vice versa.* As a result of the judicial pronouncements that in the implementation of the Directive Principles fundamental rights should not be restricted or abrogated, Parliament came to introduce amendments to the relevant Articles of the Constitution. While the fundamental rights could be enforced through Courts, the Directive Principles are not so enforceable.

Ambedkar[1] being apprehensive about the future of the Indian democracy said :

> ' .... My mind is so full of the future of our country, that I feel I ought to make this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country. What would happen to her independence ? Will she maintain her independence or will she lose it again ? This is the first thought that comes to my mind.... Will history (of division and treachery) repeat itself ? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. If we wish to maintain democracy not merely in form, but also in fact, what must we do ?
>
> We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean ? It means a way of life which recognizes liberty, equality and fraternity as the principles of life.
>
> How long shall we continue to live this life of contradictions ? How long shall we continue to deny equality in our social and economic life ? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up '.

2. The Preamble to our Constitution affords a key to its spirit and meaning. It brings out in clear terms the socio-economic content of political freedom. It gives an inspiring picture of the future of India.

3. Political freedom was a condition precedent for the socio-economic development of our country. When India attained political independence in 1947 enlightened leaders began to think about securing socio-economic equality to the low classes. The positive, constructive aspect of political freedom is the creation of a new social order based on socio-economic justice. Political freedom from foreign rule without socio-economic justice has no significance to the weaker sections. But in the attainment of the ideal of socio-economic justice, we have committed ourselves to the democratic way of life. Our Constitution declares that India is a Sovereign Democratic Republic. The Preamble has declared that the people of India in giving the Constitution to themselves had resolved to secure certain basic objectives to all citizens, and one of those objectives is justice—social, economic and political. The Constitution emphatically states that India shall be a welfare State committed to the ideal of socio-economic justice. The basic philosophy of the Constitution is expressed in the Preamble itself. Both the Preamble and the Directive principles of State Policy evidence the anxiety of the framers of the Constitution for the economic improvement of the people. Constitution gives certain directions to the legislatures and the executive that they should exercise their power for securing social and economic justice to all the people.

4. Fundamental Rights can be claimed and *enjoyed* by the citizens of India as individuals, irrespective of their religion, race or caste; by non-citizens; and by caste groups, religious communities and groups and linguistic and cultural groups. The nature and content of such rights vary from one group of citizens to another group.

5. Those fundamental rights mean equal treatment of similarly circumstanced individuals and groups. They do not prohibit differentiation of individuals, castes and communities. The absolute claim on behalf of individual liberty which necessarily led to the economic doctrine of *laissez faire* is not recognised by our Constitution. Absolute liberty of an individual in social and religious aspects also is not recognised by our Constitution. Because the Constitution makers knew that an absolute right of an individual would go in conflict with the claims of the society as a whole for public good. Individual right has been made to yield to the public good. Achievement of public good is the end.

6. Part III and Part IV of the Constitution could be said to have proceeded on two basic postulates. The first is the liberty for the development of an individual, a group of individuals, a caste or

a communal denomination. The second is that such liberty of an individual or a caste or a denominational group has to be restricted or abrogated for purposes of protecting similar kind of liberties of others.

7. In the Chapter on 'Judicial Trend', we have discussed how the judiciary subordinated the Directive Principles of State Policy contained in Part IV to the fundamental rights contained in Part III of the Constitution. So far as the advancement of the society as a whole is concerned, including the weaker sections, we feel that the continuance of the backwardness with the people is due largely to the non-implementation of the directives in their full measure, whether the reason for their non-implementation is their subordinate character or insincerity on the part of the State or lack of necessary resources. The fact remains that backwardness has continued for want of effective implementation of the directives.

8. Directive Principles are of great importance in the governance of the country. The question the judiciary considered all these years appeared to be, not whether those directives are of *fundamental importance,* but, whether those directives over-ride the fundamental rights. In other words, what the judiciary considered was whether the legislature and the executive could curtail, restrict or abrogate the fundamental rights in their efforts to implement the directives.

9. No doubt, by Article 37, the directives have been made unenforceable through Courts. The definition of the word 'State' includes the judiciary also. It is pertinent to note that the directives are fundamental in the governance of the country and they have imposed a duty on the State, including the judiciary, to apply the said principles in making laws. Judiciary while interpreting laws makes laws.

10. Our social order is such that in it there is no justice—social, economic and political—and so, the Constitution enjoins upon the State to strive for the welfare of the people by securing and protecting as effectively as it may a type of social order, different from the present one, in which justice—social, economic and political—shall inform all institutions of the national life.

11. In our society certain sections, and certain men and women, do not have adequate means of livelihood. Ownership and control of the material resources are concentrated in the hands of few communities, and such ownership and control do not subserve the common good. The operation of the present economic system has resulted in the concentration of wealth and means of production in the hands of few to the detriment of the masses. Pay and wages paid to the workers and labourers, who are actually engaged in the

production of national wealth, are not equal. Those in whose hands wealth is concentrated and those who control the means of production are exploiting childhood and youth. The present unequal social order has resulted in the deterioration of health and strength of the workers and the labourers, and that inspite of their ill-health they have been forced by economic necessity to enter avocations unsuited to their age and strength. The present economic order is incapable of providing work to the people. Educational system is devised to help the upper classes who are few in number. Working conditions are unjust and not humane. Workers in agriculture, industrial and other sectors are not getting even a living wage, and therefore they cannot afford to lead a decent standard of life. They do not have opportunities for their social and cultural advancement. Due to technological advancement, village and cottage industries, which used to provide employment to the rural artisan classes, are becoming extinct. Weaker sections, in particular the Scheduled Castes and Scheduled Tribes, do not get education and they are the worst victims of social injustice and many forms of exploitation. Agriculture, on which about 70 per cent of the population depends, is still largely in the primitive stage. Though people are prepared to work, our economy does not provide them an opportunity to work. There is great unemployment, particularly in the rural sector, and the condition of the aged, the sick and the disabled is pitiable.

12. There is wide disparity in the standard of living between the advanced communities and the backward communities. Huge wealth is concentrated in the advanced communities in the midst of abject poverty in the backward classes. These disparities indicate the social mal-adjustment. Such disparities have necessarily given rise to discontentment in the lower strata and to a desire to radically alter the present social order.

13. When this is the picture of the vast majority of our people, Part III of the Constitution has guaranteed certain fundamental rights exercisable by few and which are enforceable through courts of law against State action when restricted, curtailed or abrogated. Those 'sacrosanct' and 'transcendental' fundamental rights are of those who have by tradition and education acquired entrenched positions and those rights are, amongst others, in the matter of admission to educational institutions and in the matter of securing employment or appointment to offices under the State. Those rights declare that in the matter of succession to an office in connection with the affairs of a religious or communal institution, those who control and manage such religious and communal institutions should not be discriminated against, that the intelligent, vocal and vigilant classes should not be controlled in their right to speech and expression, that communities who are organised should not be prevented from assembling and forming their own associations and unions, that the rich and the educated should not be restricted in

their movement throughout the territory of India, that traders and merchants including those who reside in the tribal and other backward areas for exploiting the ignorant and the gullible should not be prevented from carrying on their trade and residing and settling in such areas, that those who have acquired capacity in the present unequal social and economic order to amass wealth should not be prevented from acquiring and holding property, and that those who have been the earliest to be benefitted from Western education and who have taken to non-traditional new professions, occupations and trade should not be restricted from practicing any of those professions and occupations in the State's effort to democratise those professions by making them available to the Backward Classes also. And, above all, such persons and groups have been granted fundamental right to move the Supreme Court against infringement or violation of any of those rights.

14. Directive Principles cannot be implemented in their full measure to the benefit of the weaker sections without curtailing or abrogating the fundamental rights.

15. Our Constitution, read as a whole, does not contemplate the perpetuation of the existing social and economic inequalities. It has imposed upon the State a duty to organise a new social order. Constitution has made provision for the development of the country in all fields—social, economic and political. It has been structured on the concept of an egalitarian society. Constitution makers did not desire that only certain groups of citizens should enjoy various freedoms and rights contained in Part III. There can be no dignity of an individual or a group if he or it is economically and socially suppressed. To achieve the objective, the legislature or the executive has got to curtail or abrogate the fundamental rights and such curtailment or abrogation is necessary to bring harmony between the fundamental rights and the directives. If some claim that fundamental rights are the conscience of our Constitution, in our opinion the Directive Principles are no less the conscience of the Constitution. The predominant feature of the Constitution is to ameliorate and improve the lot of the common man and bring about a socio-economic transformation based on principles of social justice. Constitution makers were anxious that those individuals and classes who had not enjoyed various freedoms and rights such as those contained in Part III, should also enjoy such freedoms and rights. The ultimate aim is that by implementing the measures contemplated in Part IV, the freedoms or rights contained in Part III be made positively available to all. When we achieve a society of equals, the fundamental freedoms and rights will be exercisable by all. For bringing about change in the existing soical and economic order of our society it is necessary to curtail or abrogate freedoms and rights in Part III. Such curtailment or abrogation would conform and run supplementary and complementary to the Directive Principles of State Policy.

16. While by Article 32 judicial review of legislation is permissible, judiciary, being an organ of the State, is also required to give effect to the directive principles. No society is static ; it grows, and as it grows its requirements change. As the requirements of a society change, different measures have got to be taken. While fundamental rights are important to some, directives are equally important to others who are many in number. Granville Austin[2] states :

> 'The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the permeation of the entire constitution by the aim of national renascence, the core of the commitment to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution'.

We have mentioned in the Chapter under the heading 'Communal Origin and Communal Composition of the Constituent Assembly' the manner in which the Constituent Assembly came to be constituted under a very narrow franchise by persons drawn from certain castes and communities. We do not, however, propose to say that the voice of the members of the Constituent Assembly was not the voice of the people of India but the trouble has arisen in the working of the Constitution. It is to be noted that the entire Constitution was accepted on the basis of consensus, not on the basis of the majority votes.

17. There can be no eradication of poverty without the curtailment or abrogation of fundamental rights. The purpose of the fundamental rights is to free all citizens from coercion or restriction by the State and the society, and to make enjoyment of liberty by all. They are not intended to convert vested rights, secured for historical reasons, into fundamental rights. By a kind of social revolution envisaged by the directive principles the Constitution intends to fulfil the basic needs of the common man and to change the social and economic structure of our society. It does not aim at guaranteeing certain rights to a few only, but it aims at securing those guarantees also to those who are denied such guarantees all these centuries. To subordinate the directives to the fundamental rights, or to ignore them, is to deprive the masses of the achievement of the hopes held out to them by the directives. If the directives are not implemented faithfully and with an honesty of purpose it is not possible to achieve a welfare State conceived of by our Constitution. The directive principles intend satisfying at least the minimum economic needs of those who are poor.

18. The long period of 25 years of the working of the Constituion has shown that the fundamental rights have been the cause for failure to implement the directive principles. The directive principles embody a concept of social and economic principle to curtail or

abrogate the fundamental rights for implementing the welfare activities. It is not correct to equate the fundamental rights with the natural rights or the inalienable rights, and it is not correct to characterise them as ' transcendental ' ' sacrosanct ', ' inviolable ' and so on.

19. Directive Principles are fundamental in their nature and they could be effective to subserve the common good if they are to prevail over the fundamental rights of the few. Indeed, every provision in the Chapter on Directive Principles of State Policy is in the nature of an exception to one or the other fundamental right ' enshrined ' in Part III. All measures of social justice are placed above the fundamental rights of individuals or groups who constitute few in number and the various concepts of social justice are evolved in the directive principles.

20. If, as stated by some that, all these years the judiciary came in the way of implementing the directive principles, the remedy is either to take away the power of judicial review or to convert the rights enshrined in the directive priciples such as the right to education, right to work, right to get living wage and so on, also as fundamental rights. Indeed, there are countries whose Constitutions have not provided for judicial review of the alleged violation of the fundamental rights, and there are Constitutions wherein right to work, right to education and right to get living wage have been declared as fundamental rights. B. N. Rao, the Constitutional Advisor, had suggested to the Constituent Assembly that in the event of any conflict between the fundamental rights and the directives, a provision be incorporated to say that the directives should prevail. He rightly apprehended that if the directive principles were not made to prevail over the fundamental rights, necessary social legislation might be hampered. The social content of the directive principles is wider than the social content of the fundamental rights. However, on account of the poor economic resources of the country the directive principles were made non-jusiciable. But the intention of the Constitution makers is clear that they held the directives superior to the fundamental rights. For instance, some of the fundamental rights like the ones in Article 15 were conferred on the citizens not for the purpose of enforcing them against women, children, Scheduled Castes, Scheduled Tribes and the other socially and educationally backward classes of citizens. But, in practice, those rights have been successfully enforced against Scheduled Castes, Scheduled Tribes and the other socially and educationally backward classes of citizens.

21. The weaker sections constitute a large population and necessarily the ideas of economic and social equality find fertile soil for violent upheaval and for blowing up the present social order. It is necessary on the part of the advanced communities, not only in their own interest but also for a peaceful evolution of society to find out the

potential causes for violent upheaval and to eliminate them. It is for this reason, the State is directed by the directives to deal with the social and economic problems by implementing such directives. The State is necessarily confronted with the conflict between the vested rights and the rights of the poorer sections. To resolve such a conflict vested interests should be made aware of their social responsibility. They must be made to subordinate their self-interest to the welfare of the exploited classes and to the society as a whole. The privileges secured by the advanced sections in the present social order must make way for the exercise of rights by the weaker sections. No doubt, to bring about social and economic equality is a challenging task for the State. The aim of the State essentially consists in the eradication of proverty, improving the economic, social and educational level of the weaker sections and raising the standard of living of the poor people. To secure social justice the vested interests have got to subordinate their privileges.

22. The right to private property cannot be a sacrosanct right ; it is not a basic or a natural right. In modern democracy, the right to private property has got to be subjected to the needs of the entire society, and the propertied classes should realise their social responsibility.

23. Parliament has come to amend certain articles in the Fundamental Rights Chapter of the Constitution without removing the distinction between the fundamental rights and the directives. In our opinion, the sovereign remedy for removing social distinctions and educational and economic disparities is to amend the Constitution in such a way that the fundamental rights and the directives are placed on the same footing. This could be done by deleting or suitably amending Article 37 of the Constitution which presently makes the fundamental duties of the State unenforceable through Courts. If this is not done soon, the vested interests may have to face a violent revolution. The starving masses and the naked millions are so impatient that they cannot, and will not, wait any longer to secure the achievement of their minimum necessities. The masses want to be freed in the positive sense from the centuries of coercion and oppression. They cannot bear with the social conditions that have prevented them from fulfilling their best selves.

24. When the social and economic order does not provide any chance or opportunity to the starving millions to fulfil their minimum needs of food, clothing and shelter, what boots it to them to be told that they have been granted the fundamental right to acquire and hold property and what boots it to the untouchables and the social lepers to be told that the Constitution holds its scales even.

25. Perhaps, realising the urge in the suffering masses, the makers of the Constitution intended to avert the happening of such a

revolution, and suggested to the State in the form of directives to adopt a middle way of gradually curtailing or abrogating the privileges of the few and bestowing benefits on the many.

26. The directive principles cannot be said to be inferior to, or they cannot be subordinated to, the fundamental rights because what the State actually does in implementing the directives is help change in the present socio-economic structure for the better.

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2. Granville Austin—*The Indian Constitution Cornerstone of a Nation,* (Oxford University Press, Bombay, 1972) page 50.

CHAPTER XVIII

COMMUNAL ORIGIN AND COMMUNAL COMPOSITION OF THE CONSTITUENT ASSEMBLY.

1. In September 1945, the British Government made an announcement that it was contemplating the creation of a Constituent Body in India and that elections be held with the newly created Provincial Legislatures as electoral bodies for electing members of a Constituent Assembly. This was announced by the then Viceroy, Lord Wavel, on 19th September, 1945. In January 1946, the British Government sent a Parliamentary delegation to India. It reported that the tide of independence was running fast. Later, in March 1946, the British Government despatched a Cabinet-Level Mission. During the late 1920s and the 1930s there was considerable communal tension between the Muslims and non-Muslim Indians, in particular the Hindus. The only two political parties in India were the Indian National Congress and the Muslim League. It was alleged by the Muslims that the Indian National Congress was dominated by the Hindus. While the Congress called for a Constituent Assembly for self-determination, the Muslim League preferred the presence of British in India as a deterrent to Congress (Hindu) power. The Muslim League demanded that before Independence, they must be assured of the sanctuary of autonomous areas, to which effect it passed a resolution in Lahore in 1940. By 1945 the Muslim League took a further step. According to it, India should have two Constituent Assemblies—one for Hindustan and the other for Pakistan. It asserted that Independence should come only when the two Constitutions, one for each, had been completed and only when Hindustan and Pakistan had been established. And till then the British must remain in India to see that justice was done to Muslims. This was opposed by the Congress. The Congress asserted that the people of India were Indians, no matter what their religions were; British must leave India. It is only after they left India, Indians could come together, settle the differences and share their future. India should be one Nation. It should have one Constitution, and the *rights of all minority groups* would be protected by the Constitution. The Cabinet Mission tried to reconcile the two opposing claims by a compromise Plan. India was to remain a single State but the power of the Central Government would be confined only to foreign affairs, communications and defence. The various Indian Provinces would be grouped into three regions—one with a predominantly Muslim population, the second with a predominantly Hindu population and the third with nearly equal population of both Hindus and Muslims. They were to meet in three group Assemblies to frame their Constitutions for their

respective component provinces. Thereafter, the group Assemblies would return to the All India Constituent Assembly for drafting a national Constitution. This was accepted both by the Congress and the Muslim League with certain reservations. The Cabinet Mission had suggested that adult suffrage should be rejected since it was too cumbersome and slow, and so it provided that the various Provincial Legislatures should elect members of the Constituent Assembly. Though it was the demand of the Congress from at least 1934 that the " only satisfactory alternative to the White Paper (1933) is a Constitution drawn up by a Constituent Assembly elected on the basis of adult franchise or as near it as possible, with the power, if necessary, to *important minorities* to have their representatives elected exclusively by the electors belonging to such minorities " [1], the Congress agreed to the proposal of the Cabinet Mission. Each Province had to be represented in the Constituent Assembly in the ratio of one member to one million of their population. The members of different categories in the provincial legislatures should elect their representatives separately according to their *communal* percentage in the Provinces. The Princely States were to have 93 representatives in the Constituent Assembly. However, the mode of selecting the representatives from the Princely States was left to the consultation between the Rulers and the Constituent Assembly.

2. Elections to all the provincial Legislatures had just then been completed and it is pertinent at this stage to note the *communal composition* of the provincial legislatures.

3. Under Section 61 of the Government of India Act, 1935, read with the Fifth Schedule, the Chambers of Provincial Legislatures were to have the Scheduled Castes, Scheduled Tribes, Sikhs, Mohammedans, Anglo-Indians, Europeans, Indian Christians and women. Even amongst the women, reservation had been made for the Sikh women, Mohammaden women, Anglo-Indian women and Christian women. About 80 Muslim representatives had been elected to the Constituent Assembly from the Provincial Legislatures on Muslim League tickets.

4. To a statement made by Pandit Jawaharlal Nehru at a Press Conference in Bombay on July 10, 1946, a day before commencement of elections to the Constituent Assembly, the Muslim League, headed by Jinnah, found a pretext to boycott the Assembly and the boycott was not lifted till the partition of the country in 1947.

5. The elections of the members of the Constituent Assembly from the Provincial Legislatures took place between 11th and 22nd July, 1946. By the Congress Committee policy, minorities like the Christians, Anglo-Indians, Sikhs, Parsees, Scheduled Castes and Backward Tribes were fully represented in the Constituent Assembly,

usually by their own choosing. Even though the Muslims got elected on Muslim League tickets, the Congress gave some seats to Muslims also. On the Constituent Assembly the representation of minorities was also as follows :

Sikhs 5 ; Parsees 3 ; Christians 7 ; Anglo-Indians 3 ; Backward Tribes 5 ; Muslims 31 ; Scheduled Castes 33.[2]

Out of 161 members of the Constituent Assembly who have been named in the text, we find that 99 were Hindus, and the others were Muslims, Christians, Sikhs, Jains, Parsees, Anglo-Indians, Adivasis and Scheduled Castes. The caste break-up of the 99 Hindus is as follows :

56 Brahmins ; 15 Kayastas ; 11 Vaisyas and Marwaris ; 9 Kshatriyas and Rajputs ; 3 Marathas ; 3 Reddies ; 1 Lingayat (Karnataka) ; and 1 Vokkaliga (Karnataka .

The communal break-up of the remaining members not named in the text could, perhaps, be similar .

6. The Constituent Assembly appointed some Committees. Of them the most important were the Drafting Committee and the Minorities Sub-Committee (of the Advisory Committee).

The communal composition of the Drafting Committee was as follows :

Brahmins 5 ; Scheduled Caste 1 ; Muslim 1 ;

(B. L. Mittar, Brahmo-Samaja, ceased to be a member soon after his appointment, and D. P. Khaitan, Marwari, died in 1948, and in his place T. T. Krishnamachari, a Brahmin, was nominated).

7. The Minorities Sub-Committee consisted of 29 members, of whom 5 were Brahmins, 4 Muslims, 4 Christians, 4 Scheduled Castes, 3 Sikhs, 3 Anglo-Indians, 2 Parsees, 1 was Kshatriya, 1 Scheduled Tribe, 1 Amil (Hindu) and one, whose caste is not known, was not a member of the Constituent Assembly. Three Muslims were nominnated by Rajendra Prasad in June 1947. The Chairman of the Drafting Committee, B. R. Ambedkar, was a member of the Scheduled Caste and the Chairman of the Minorities Sub-Committee, H. C. Mookarjee, was a Christian.

8. Recognition of the claims of different minority communities and the protection of their interests can be traced back to a period immediately following the 1857 Revot. The Indian Councils Act. 1892, provided for nomination to Councils of representatives of certain communities such as Muslims. In 1906 Aga Khan represented to Viceroy, Minto, for separate electorate to Muslims, and the Indian

Councils Act, 1909, provided for communal representation through separate communal electorate. By 1916 all religious minorities claimed separate representation through separate electorates. The official recognition of the claims of different communities could be traced to 1908 when the then Viceroy of India, Minto, recommended to the Secretary of State that Muslims should be granted separate electorate. He said " the Indian Mohammadans are much more than a religious body. They form, in fact, an absolutely separate community, distinct by marriage, food and custom, and claiming in many cases to belong to a race different from the Hindus ".[3] " More and more minorities came to be recognised as being in need of protection, through separate representation in the Legislatures, reserved quotas in the public services, and in various other ways. In course of time the Sikhs, the Anglo-Indians, the Indian Christians, the Depressed Classes (the name then given to the 'untouchable' section of the Hindu community—now generally known as Scheduled Castes) were treated as minorities in need of such protection. In fact, the concept of minorities was so expanded as to include even the prosperous European commercial and mercantile community in India as needing separate representation in the Legislatures ".[4]

9. Minority claims and safeguards of their interests figured as one of the most important features of the Government of India Act, 1935. In April 1932 the British Prime Minister, Ramsay Mac Donald, gave what is known as the Communal Award by which representation through separate electorates was given to Muslims, Europeans, Sikhs, Indian Christians and Anglo-Indians. Seats were also reserved for Marathas in Bombay. The 'Depressed Classes' were also given seats to be filled by election from special constituencies in which they alone could vote. However, the allocation of seats for Depressed Classes was modified by the Poona Pact under which they got larger number of seats, abolishing separate electorates. Besides according communal representation from separate communal electorates, a special responsibility was imposed on the Governors to safeguard the legitimate interests of those minorities. The Governors were directed to see that those racial or religious communities, for whom special representation was accorded in the Legislature and those classes of the people committed to the Governors' charge who, whether on account of the smallness of their number like the Anglo-Indians, Muslims, Christians, and Sikhs, or through lack of educational or material advantages like the depressed classes cannot as yet fully rely for their welfare upon joint political action in the Legislatures, shall not suffer, or have reasonable cause to fear, neglect or oppression. The other principal demand was for representation in public services. The Instrument of Instructions issued to the Governors in 1937 directed the Governors that they should interpret the said special responsibilities as requiring them to secure a due proportion of appointments in services to the several

communities. The situation in regard to the minorities deteriorated after 1937 when the Congress was able to return in impressive majority in the Legislatures constituted under the Government of India Act, 1935, whereas the success of the Muslim League at the polls was very poor. Hindu-Muslim relations assumed formidable proportions, till the Muslim League adopted in 1940 the famous Pakistan Resolution stating that no Constitutional plan could be workable or acceptable to the Muslims unless the Constitutional plan recognised the basic principle that the areas in which Muslims were numerically a majority were grouped to constitute " Independent States ".

10. Under the Cabinet Mission Plan, the Constituent Assembly was elected, as described above, and when in December 1946 the Constituent Assembly met, the Muslim League did not send any representatives. The Congress had given representation not only to Muslims but also to Christians, Jains, Anglo-Indians, Sikhs, Parsees, Depressed Classes and Backward Tribes in pursuance of its policy declared in the past[5] that it was its primary duty as well as its fundamental policy to protect the religious, linguistic, cultural and *other rights of minorities* in India so as to assure for them in any scheme of Government to which the Congress would be a party, the widest scope for their development and their participation in the fullest measure in the political, economic and cultural life of the nation. It is in pursuance of the said declared policy that Jawaharlal Nehru moved the Objectives Resolution in the Constituent Assembly on December 13, 1946 which related, *inter alia,* " to the drawing up of a Constitution for the future governance of India in which adequate safeguards shall be provided for *minorities,* backward and tribal areas and *Depressed and other Backward Classes* ".[6]

11. Laying special emphasis on the importance of the issue of the minorities, Govinda Ballabh Pant moved a resolution in the Constituent Assembly on January 24, 1947 while setting up the Advisory Committee for minorities; " The question of minorities everywhere looms large in the constitutional discussions. Many a constitution has foundered on this rock. A satisfactory solution of questions pertaining to minorities will ensure the healthy vitality and strength of the free State of India that will come into existence as a result of our discussions here. The question of minorities cannot possibily be over-rated. It has been used so far for creating strife, distrust and cleavage between the different sections of the Indian nation. Imperialism strives on such strifes. It is interested in fomenting such tendencies. So far, the minorities have been incited and have been influenced in a manner which has hampered the growth of cohesion and unity. But it is now necessary that a new chapter should start and we should all realise our responsibility. *Unless the minorities are fully satisfied,* we cannot make any progress; we cannot even maintain peace in an undisturbed manner ".[7]

12. The Minorities Sub-Committee constituted by the Advisory Committee circulated a Questionnaire prepared by K. M. Munshi which was in the following terms:

1. What should be the nature and scope of the safeguards for the minorities in the new Constitution ?

2. What should be the political safeguards for minorities
   (a) in the Centre;
   (b) in the Provinces ?

3. What should be the economic safeguards for a minority
   (a) in the Centre;
   (b) in the Provinces ?

4. What should be the religious, educational and cultural safeguards for a minority ?

5. What machinery should be set up to ensure that the safeguards are effective ?

6. How is it proposed that the safeguards should be eliminated, in what time and under what circumstances ?

13. Ambedkar submitted a note on the minorities and fundamental rights but "as a leader of the Scheduled Castes, he was primarily concerned with the political and social safeguards for the Scheduled Castes and with ensuring that the new Constitution provided adequately for their uplift". Jagjivan Ram and the All- India Depressed Classes Association submitted memoranda on similar lines. Ujjal Singh and Harnam Singh presented a detailed Memorandum setting out the safeguards to be provided for the Sikhs. They demanded that three backward classes among the Sikhs known as Mazhabis, Ramdasias, and Kabir Panths should be provided with special educational facilities and reservations in public services that were provided for Scheduled Castes and Aboriginal Tribes. Frank Anthony and S. H. Prater submitted a Memorandum on behalf of the Anglo-Indians. R. N. Brahma wanted safeguards for the tribal people in Assam. Homi Modi, on behalf of the Parasis, did not ask for any special privileges to them but only pleaded that Parsis should be accorded special representation as is given to similar minorities. Rajakumari Amrit Kaur (Christian) was against safeguards of any kind. S. P. Mookerjee (Brahmin) and Jairamdas Daulatram (Amil-Hindu) suggested the setting up of a Minorities Commission in each province and Minorities Protection Court. Mookerjee suggested reservation of seats in legislatures for important minorities. K. T. Shah (Vaisya) disapproved of the continuance of the separate electorates for different communities. M. Ruthnaswamy (caste not known) argued that the majority community had developed a tendency to make little of the rights and liberties of a minority. He wanted a two-fold safeguard for minorities, one the minorities

should be allowed to profess, preach and propogate their religion and the other related to special grants for the promotion of education of backward minorities and the provision by the State to the schools for minority communities. He also advocated representation of such minorities in Central, Provincial and State Ministries and all departments of administration.

14. The Muslim League was not participating in the porceeding and so no Memorandum was presented on behalf of the Muslim community.

15. It is in the context of these divergent views that the Sub-Committee for Minorities considered this important matter.

The Sub-Committee on Minorities presented its Report to the Advisory Committee and the important recommendations, so far as we are interested in, were as follows :

1. *Representation in Legislature* : There should be no separate electorates for elections to legislatures.

But there should be reservation of seats for different minorities in the Legislatures.

The Sub-Committee recognised the following communities as minorities.

(a) Anglo-Indians ; (b) Parsees ; (c) Plains Tribes in Assam ; (d) Indian Christians ; (e) Muslims ; and (f) Scheduled Castes.

16. Indian Christians stated that they wanted reservations proportionate to their population in the Central Legislature and in the provincial legislatures of Madras, Bombay and East Punjab.

17. In view of the peculiar and uncertain position of East Punjab and the position of the Sikhs, the Sub-Committee decided that the question of their representation be referred to the Advisory Committee.

Reservation of seats in Cabinet : The Sub-Committee recommended that there should be no separate provision for reservation of seats for minorities in the Cabinets.

Reservation in services : The Sub-Committee stated, on the general proposition, that there should be reservation in public services for different communities named above. However, it is important to note that the *Parsees and Indian Christians did not ask for reservation in services.* But, on the question whether there should be reservation of posts for which competitive examinations were held, the *Sub-Committee decided that there should be no such*

reservation for Muslims, Sikhs and Tribesmen. The Anglo-Indians. Parsees and Indian Christians did not want reservation even in posts which were filled by competitive examinations. But, the Sub-Committee recommended that there should be such reservation for Scheduled Castes.

18. The Advisory Committee submitted its Report to the President of the Constituent Assembly on the minority rights. Its recommendations were as follows:

1. Elections to central and provincial legislatures should be held on the basis of joint electorates, but not on separate electorates.

2. There shall be no reservation for Anglo-Indians. But, the President of the Union and the Governors of the Provinces shall have power to nominate representatives of the Anglo-Indian community to Lower House of the Centre and in the Provinces respectively. The Advisory Committee congratulated the representatives of the Anglo-Indian community for not pressing their earlier proposals. Parsees also withdrew the claim for statutory reservation, and the Advisory Committee appreciated the stand taken by Homi Modi on behalf of Parsees.

3. The case of Tribesmen in Assam was deferred.

4. Indian Christians also did not want separate electorate, but they expressed their willingness to accept reservation proportionate to their population in Central Legislature and in the provincial legislatures of Madras and Bombay.

5. In view of the uncertainty of the position of the Sikhs at that time, since the Constituent Assembly was awaiting the Award of the Boundary Commission in the Punjab, the question of safeguards to Sikhs was held over.

19. In respect of Muslims and Scheduled Castes, the Committee expressed that there was no ground for departing from the general policy adopted in the case of other minorities, and so it recommended that seats be reserved for Muslims and Scheduled Castes as in the case of Christians in proportion to their population and that these seats shall be contested through joint electorate. It recommended that there should be no reservation for minorities in the Cabinets. The committee did not recommend for satutory reservation of posts in services in favour of the minorities but, it expressed that there should be some clause in the Constitution exhorting the Central and the Provincial Governments to keep in view the claims of *all the minorities* for making appointments to Public Services consistently with the efficiency of administration, and finally it recommended, *in particular,* that it was the fundamental duty of the State to take special steps to bring those minorities *which are backward* to the

level of the general community and recommended, accordingly, for appointment of a separate Commission to investigate into the conditions of "*socially and educationally backward classes*", to study their difficulties under which they labour and to recommend to the Union and the Provincial Governments, as to the steps that should be taken to ameliorate their difficulties.

SUMMARY OF RECOMMENDATIONS

REPRESENTATION IN LEGISLATURES

1. Electorates: All elections to the Central and Provincial Legislature will be held on the basis of joint electorate.

Provided that as a general rule there shall be reservation of seats for the minorities shown in the schedule in the various legislatures on the basis of their population.

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period.

SCHEDULE

Group A:—Population less than ½ per cent in the Indian Dominion omitting States.

1. Anglo-Indians, 2. Parsees, 3. Plains Tribesmen in Assam.

Group B:—Population not more than 1½ per cent.

4. Indian Christian; 5 Sikhs.

Group C:—Population exceeding 1½ per cent.

6. Muslims; 7. Scheduled Castes.

2. (a) *Anglo-Indians*:—There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the legislatures as a result of the general election.

(b) *Parsees*:—There shall be no statutory reservation in favour of the Parsee community, but they would continue to remain on the list of recognised minorities;

Provided that if as a result of elections during the period prescribed in provision 2 to para 1 above it was found that the Parsee community had not secured proper representation, their claim for reserved seats would be reconsidered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution.

Note:—The above recommendations represent the view taken by the representatives of the Parsee community.

3. (a) *Indian Christians*:—There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in he Provincial Legislatures of Madras and Bombay. In other Provinces, they will have the right to seek election from the general seats.

(b) *Sikhs* :—The question of minority rights for the Sikhs will be considered separately.

(c) *Muslims and Scheduled Castes* :—There shall be reservation of seates for the Muslims and Scheduled Castes in the Central and Provincial Legislatures on the basis of their population.

4. *Additional right to minorities* :—The members of the minority community who have reserved seats shall have the right to contest unreserved seats as well.

5. *No Weightage* :—The minorities for whom representation has been reserved will be allotted seates on their population ratio, and there shall be no weightage for any community.

6. *No condition for a minimum number of votes of one's own community* :—There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.

7. *Method of voting* :—There may be plural member constituencies but cumulative voting shall not be permissible.

Representation of Minorities in Cabinets

8. *No representation for minorities* :—(a) There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph VII** of the Instrument of Instructions issued to Governors under the Government of India Act, 1935, shall be provided in Schedule to the Constitution.

**VII. In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consulation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

Recruitment in Services

9. *Due share to all minorities guaranteed* :—In the All India and Provincial services, the *claims of all the minorities* shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration.

Note :—Appropriate provision shall be embodied in the Constitution or a Schedule thereto to this effect.

10. *Position of Anglo-Indian Community* :—Owing to the complete dependence of the economy of the Anglo-Indian Community on their position in certain services and their existing educational facilities, a sub-committee consisting of the following members has been appointed to submit a report :

(1) Pandit G. B. Pant ;
(2) Mr. K. M. Munshi ;
(3) Mrs. Hansa Mehta ;
(4) Mr. S. H. Prater ; and
(5) Mr. Frank Anthony.

Working of safegauards

11. *Officer to be appointed* :—An Officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities.

12. *Statutory Commission for Backward Classes* :—Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of *socially and educationally backward classes*, to study the difficulties under which they labour and to recommend to the Union or the State Government, as the case may be, the steps that should be taken to eliminate their difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants.

20. Thereafter the Constitutent Assembly adopted in August 1947 the following clauses for minorities :

Representation in Legislatures

1. *Electorates* :—All elections to Central and Provincial Legislatures will be held on the basis of joint electorates ;

Provided that, as a general rule, there shall be reservation of seats for the minorities shown in the Schedule and the section of the Hindu community referred to in para 1-A hereof in the various Provincial Legislative Assemblies on the basis of their population.

Provided further that such reservation shall be for ten years, the positiin to be reconsidered at the end of the period.

SCHEDULE

Group A :—Population less than ½ per cent in the Indian Dominion, omitting Indian States.

1. Anglo-Indians ; 2. Parsees.

3. Plains Tribesmen in Assam, other than Tea garden Tribes.

Group B :—Population not more than 1½ per cent.

4. Indian Christians ; 5. Sikhs.

Group C :—Population exceeding 1½ per cent.

6. Muslims.

1-A. The section of the Hindu Community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935, shall have the same rights and benefits which are herein provided for minorities specified in the Schedule to Paragraph 1.

2. (a) *Anglo-Indians* :—There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election.

(b) *Parsees* :—There shall be no statutory reservation in favour of the Parsee community, but they would continue to remain on the list of recognised minorities :

Provided that if as a result of elections during the period prescribed in proviso 2 to para 1 above it was found that the Parsee community had not secured proper representation, their claim for reserved seats would be considered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution.

Note :—The above recommendations represent the view taken by the representatives of the Parsee community.

3. (a) *Indian Christians* :—There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other Provinces; they will have the right to seek election from the general seats.

(b) *East Punjab* :—In view of the special situation of East Punjab, the whole question relating to it will be considered later. (This sub-clause refers to Sikhs).

(c) *Muslims* :—There shall be reservation of seats for the Muslims in the Lower Houses of the Central and Provincial Legislatures on the basis of their population.

3-A. The section of the *Hindu community* referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935, shall have the same rights and benefits which are herein provided for the *minority community* specified in paragraph 3(c).

4. *Additional right to minorities* :—The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well.

In view of the special situation of West Bengal, the question relating to it will be considered later.

5. *No Weightage* :—The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community.

6. *No condition for a minimum number of votes of one's own community* :—There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.

7. *Method of voting* :—There may be plural member constituencies, but the voting shall be distributive, that is each voter will have as many votes as there are members and he should give only one vote to a candidate.

Representation of Minorities in Cabinets

8. *No reservation for minorities* :—There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph VII of the Instrument of Instructions (reproduced below) issued to Governors under the Government of India Act, 1935, shall be provided in a Schedule to this Constitution.

VII. In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority

communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

Recruitment in Services

9. *Due share to all minorities guaranteed* :—In the All-India and Provincial Services, the claims of all the *minorities* shall be kept in views in making appointments to these services consistently with the consideration of efficiency of administration.

(*Note* :—Appropriate provision shall be embodied in the Constitution or a Schedule thereto this effect).

10. (a) *Position of Anglo-Indian Community* :—(1) The present basis of recruitment of Anglo-Indians in the Railways, the Posts and Telegraphs and the Customs Departments shall continue unchanged for a period of ten years after the coming into operation of the Federal Constitution. After that, at intervals of every two years, the reserved vacancies shall be reduced each time by 10 per cent. This shall not however bar the recruitment of Anglo-Indians in the categories of posts in which at present they have reserved places over and above the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition with other communities. It shall also in no way prejudice their recruitment on merit to posts in these departments, or any other in which they have not been given a reserved quota.

(ii) After a period of ten years from the date of the coming into operation of the Federal Constitution all such reservations shall cease.

(iii) In these services there shall be no reservation for any community after the lapse of 10 years.

(b) (i) The present grants to Anglo-Indians' education made by the Central and Provincial Governments should be continued unchanged for three years after the coming into operation of the Federal Constitution.

(ii) After the expiry of the first three years, the grants may be reduced by 10 per cent and by a further 10 per cent after the sixth year, and again by a further 10 per cent after the ninth year. At the end of the period of 10 years, special concessions to Anglo-Indian Schools shall cease.

(iii) During this 10 years period, 40 per cent of the vacancies in all such State aided Anglo-Indian Schools shall be made available to members of other communities.

Working of Safeguards

11. *Officer to be appointed* :—An Officer shall be appointed by the President at the Centre and by the Governor in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities.

12. *Statutory Commission for backward classes* :—Provision shall be made for the setting up of a Statutory Commission to investigate into the conditions of *socially and educationally backward classes*, to study the difficulties under which they labour and to recommend to the Union or the State Government, as the case may be, the steps that should be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants.

21. The Indian (Provisional Constitution) Order, 1947, issued under the Indian Independence Act, 1947, had similarly provided for representation in the Legislative Assemblies to various communities such as Mohammedans, Indian Christians, Anglo-Indians, Sikhs, Scheduled Castes, Backward Tribes, and the Mahrattas (in Bombay).

By the time the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas took up the question of joint or separate electorates, the partition of the country into India and Pakistan was a foregone conclusion and so the Advisory Committee recommended that "the first question which we tackled was that of separate electorates; we considered this as being of crucial importance both to the minorities themselves and to the political life of the country as a whole. By an overwhelming majority we came to the conclusion that the system of separate electorates must be abolished in the new Constitution".

Vallabhai Patel, while introducing the motion in the Assembly said that there was unanimity of opinion "on the point that there should be no more separate electorates and we should have joint electorates hereafter. So that is a great gain".[8] Although B. Pocker Sahib and Chaudhri Khaliquzzaman fought for separate electorates, so far as Muslims were concerned, and when the said proposition for separate electorates for Muslims was put to vote the same was negatived by the Constituent Assembly.[9] About three weeks earlier at the instance of the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas, the Assembly had rejected the principle of reservation of seats not only for Muslims but also for Anglo-Indians, Sikhs and Indian Christians. Ambedkar, while referring to the said decision, said "as a matter of fact this clause is unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representation of Muslims, Sikhs, Anglo-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms state it".[10]

22. So far as the provision contained in the Draft Constitution for reservation of seats in the Legislatures for Muslims, Indian Christians, Scheduled Castes and Scheduled Tribes on *joint* electrorate was concerned, there was lengthy discussion both in the Advisory Committee and in the Constituent Assembly. The Constituent Assembly finally rejected reservation of seats to Muslims and Indian Christians, even on joint electorate.

23. The Draft Constitution prepared by the Drafting Committee, the Draft Constitution prepared by B. N. Rao, the Constitutional Advisor, and the Revised Draft Constitution had contained

the heading " Special Provision relating to *Minorities* " In Part XIV. When the Constituent Assembly finally took a decision that there should be no reservation even for the Muslims and Christians besides Sikhs and Parsees, T. T. Krishnamachary suggested an amendment for the word " Minorities " which occurred in the heading of Part XIV and Article 296 of the Draft Constitution, to be changed to the words " certain classes ". Accordingly the Constituent Assembly adopted the heading to Part XIV as " Special Provisions relating to certain classes ". (It is now part XVI).

24. On a comparison of the relevant corresponding clauses and Articles of the Draft Constitution prepared by B. N. Rao the Constitutional Advisor, the Draft Constitution and the Revised Draft Constitution prepared by the Constituent Assembly under the Chairmanship of Ambedkar, the following communities were considered as *minorities* for one or more benefits like the reservation of seats in Legislatures, reservation of posts in services and nomination on the Legislatures based either on religion, race or caste. They were: (1) Muslims; (2) Anglo-Indians; (3) Christians; (4) Sikhs; (5) Parsees; (6) Backward Tribes; and (7) Depressed Classes (Scheduled Castes). So far as the question of *separate electorates* for certain communities for their representation on the Legislatures was concerned, the case of Muslims, Christians, Sikhs, Scheduled Castes, Backward Tribes, Anglo-Indians and Parsees was rejected at different stages, either by the Sub-Committees or by the Advisory Committee, or finally by the Constituent Assembly. So far as the *reservation of seats in the Legislatures* on joint electorate was concerned the case of Muslims and Christians was rejected by the Constituent Assembly, while the Constituent Assembly accepted the reservation of seats on joint electorate in Legislatures only in the case of the Depressed Classes (Scheduled Castes) and Scheduled Tribes. It accepted the *nomination* on the Legislatures of only the Anglo-Indian community.

25. And in so far as the *reservation in services* was concerned, the Constituent Assembly finally accepted such reservation only in favour of the Depressed Classes (Scheduled Castes), Scheduled Tribes and Other Backward Classes, and also in favour of the Anglo-Indian community in some Central Services.

26. When all those communities were considered as minorities needing various forms of special attention or treatment the Committees, Sub-committees and the Constituent Assembly considered the case of Muslims, Christians, Anglo-Indians, Sikhs, Scheduled Castes, Scheduled Tribes and Parsees as distinct and separate from the case of the *Other Backward Classes* and their future was left into the hands of a Commission to be appointed by the President of India. In other words, the expression *Other Backward Classes* was not intended to include the Muslim, Indian Christian,

Anglo-Indian, Sikh and Parsee communities. It was, obviously, intended to mean only the castes and tribes.

27. Our conclusion that the expression *backward classes* means only the castes and tribes finds support also from the provisions of Sections 242 and 266(4) of the Government of India Act, 1935 and Article 296 and also Article 37 of the Draft Constitution. Section 242 of the Government of India Act, 1935 provided for appointment of members of Anglo-Indian community to certain categories of posts and Article 266(4) read with the orders under the Instrument of Instructions issued to Governor-General and the Governors provided for "the manner in which appointments and posts are to be allocated between the various communities in the Federation or a Province". While the Draft Constitution expressed a pious hope in Article 296 that the claims of all *minority communities* shall be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or of a State, the said Article came to be numbered as 335 finally omitting the expression "*all minority communities*" and substituting in its place the words "*Scheduled Castes and Scheduled Tribes*". Since Article 296 of the Draft Constitution provided for reservation of posts in the Union or in a Province for all minority communities no specific provision was made under the directive principles of State policy permitting reservation for minority communities. However, a provision in favour of *backward classes*, and in particular the *Scheduled Castes* and *Scheduled Tribes* was made in Article 37 of the Draft. From the foregoing discussion we are of the opinion that the expression "*Other Backward Classes*" excludes the non-Hindu religious minority communities and means only the castes, tribes, and racial groups.

28. Clause 4 of Article 286 of the Draft had provided that the Public Service Commission need not be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Union or a State. After the rejection of the claims of religious and denominational minorities like Muslims, Indian Christians, Sikhs, Parsees and Anglo-Indians for reservation of posts in the Services the language of Article 286(4) came to be altered to say that the Public Service Commission need not be consulted as respects the manner in which any provision referred to in clause 4 of Article 16 regarding *backward classes* may be made or as respects the manner in which effect may be given to the provisions of Article 335".[11] When this clause was introduced as an amendment some contraversy arose. P. S. Deshmukh moved an amendment to exclude from the jurisdiction of the Public Service Commission not only the reservation of posts in favour of *backward classes* but also the reservation for various classes according to their numbers in the Union or a State. The purpose of this amendment, he explained, was to secure a just and

fair representation for all classes in the Public Services of the Union and the States and not leave it to bare competition and to the sweet choice of the Public Service Commissions. He mentioned the position particularly in Madras where the various communities were arranged in various groups and each group was given representation in Government Service on the basis of its population. He said that 80 per cent of the people took no part in as far as the civilised things of life were concerned and there was an iron curtain between them and the rest: unless every community, especially the larger and more populous communities, advanced equally and the advanced communities afforded them opportunities of development, the progress of India would be impossible. He expressed great apprehension that if the clause stood as drafted, the backward classes were likely to suffer:[12] He said "Backward Classes are likely to be defined in a very limited and restricted manner; it is not the claim of *only* the Scheduled Castes that they are backward; it is not the tribal people *alone* who should be considered backward; there are millions of others who are more backward than those and there is no rule nor any room so far as these classes are concerned".[13]

29. Ambedkar summing up the position briefly and succinctly, said that the real protection for *backward classes* was the one that had been adopted by the Drafting Committee, namely, to permit the Legislature to fix a certain quota to be filled by these classes, and that this matter would have to be left to the *Backward Classes Commission* for which there was provision in the Constitution".[14] The Drafting Committee met some of the members in this connection and eventually the following amended clause was placed before the Assembly by T. T. Krishnamachari for acceptance: "Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) may be made or as respects the manner in which effect may be given to the provision of Article 335". The purpose of the amendment was thus explained by the mover: "Article 16(4) is an enabling provision in regard to special representation for *backward classes.* Article 335 is an enabling provision in regard to taking into consideration the claims of Scheduled Tribes and Scheduled Castes. These two enabling provisions are brought together in this particular clause. So there was no question of any injustice being done either to the Scheduled Castes and Scheduled Tribes or to the Backward Classes or any preference being given to one over the other".[15]

30. Finally the Constituent Assembly accepted this provision.

31. It was precisely for this reason Munsi and Ambedkar said in the Constituent Assembly and Parliament that the expression 'class' appearing in Article 10(3) of the Draft Constitution, now

Article 16(4), meant only Scheduled Castes, Scheduled Tribes and a collection of certain other castes.

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CHAPTER XIX

SECULARISM AND MUSLIM INDIANS

The faith of Indian democracy is in secularism. Articles 25 and 26 deal with the religious rights of individuals, religious denominations and communal groups. They provide for the freedom of conscience, free profession, free practice and free propagation of religion, subject, however, to public order, morality and health and to the other provisions of Part III. These Articles also provide for regulating or restricting the economic, financial, political and other secular activities which may be associated with religious practice, for social welfare and reform and for throwing open of Hindu religious institutions of public character to all classes and sections of Hindus.

They guarantee to every individual, religious community, denomination and any section of it, freedom to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own, acquire and administer movable and immovable property.

The word 'secularism' is not to be found in the Constitution, but it is stated that the spirit of secularism has permeated almost all relevant provisions of the Constitution.

Indian society is multi-religious, and secularism alone is consistent with the Indian spirit. India is not a theocracy but it is a secular democracy. Citizenship is purely a non-religious concept and so the rights and obligations associated with citizenship are secular. Untouchability is a unique feature of the traditional Hinduism, but by Article 17 untouchability has been abolished. Indeed, this provision and other provisions like Article 15(4) and the Hindu Code illustrate the Hindu attempt at secularism. Hindu Code, though a personal law, has been modified on a rational, modern and scientific basis though the modified law is inconsistent with Hindu religion. In furtherance of the said spirit of secularism, Art. 44 should have been implemented and the kind of secularism conceived of by the Constitution has not been achieved yet.

When in May 1947 the Constituent Assembly adopted the Draft Constitution, it provided freedom of religion, freedom of conscience, right to profess, practise and propagate religion, right to establish and maintain religious institutions, right to manage their affairs and the right to acquire property. After those provisions were incorporated in the Draft Constitution, the Plan for

partition of India was accepted and, in fact, India was divided into Bharath and Pakistan. Yet the Constituent Assembly did not depart from the path of secularism.

The Advisory Committee on Minorities recommended for joint electorates with reservation of seats in Legislatures for Muslims, Christians and Scheduled Castes. Jawaharlal Nehru welcomed such reservation, because he was doubtful about the behaviour of the majority community if those reservations were not granted to the minorities.[1] When Khaliq-uz-Zaman expressed dissatisfaction over the joint electorates and pleaded for separate electorates for Muslims, Pandit Pant disapproving such a claim, asked him : 'do you want a national secular State or a theocratic State? If the latter, it can only be a Hindu State'.[2] But the Advisory Committee resolved on 11th May 1949 that even 'the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished'.[3] Sardar Patel, Chairman of the Advisory Committee, had moved a resolution in the Constituent Assembly for abolition of separate electorates and reservations for Muslims and Christians in the Legislatures, and the same were abolished.[4]

Although some Muslim representatives wanted separate electorate on the ground that they were nurtured under the system of separate electorates, whether for good or for evil, other Muslim delegates like Ismail Khan,[5] Nazirudin Ahmed,[6] Zaidi,[7] Tajammul Hussain,[8] expressed that they should not obstruct the establishment of a secular State in India and should not retard healthy political developments. Nehru said that secularism was 'an ideal to be aimed at'. He told the Constituent Assembly that the establishment of a secular State was 'an act of faith for all of us, an act of faith above all for majority community because they will have to show after this they can behave to others in a generous, fair and just way. Let us live up to that faith'.[9]

Begum Rasul requested the minorities to trust in the goodwill of the majority community and to work for building a secular State. She said 'trust begets trust..... when we place a sacred trust in the hands of the majority, it is sure to realise its responsibility',[10] to which Sardar Patel declared : 'trust us and see what happens'.[11]

Lokanath Misra regarded that secularism was a concession granted by Hindus to non-Hindus in India. In his opinion the 'freedom to propagate religion was a charter of Hindu enslavement ..... the most disgraceful Article, the blackest part of the Indian Constitution'.[12] He raised the slogan : 'Hinduism in danger'. Frank Anthony congratulated the majority community on guaranteeing the right to propagate religion. According to him,

it was the most fundamental right so far as the Christians were concerned, and said that a ban on conversion of a minor 'will virtually take away the right to convert'[13].

Rashtriya Swayamsevak Sangh (RSS) and the Hindu Mahasabha denounced the concept of a secular State and demanded a Hindu State in India[14]. Lohia warned that establishment of a Hindu State would fragment India into various States, like a Sikh State, a Jat State, a Brahmin State and so on.[15]

Hindus could not have adopted Hinduism as the State religion because Hinduism encompasses monotheism, polytheism, agnosticism and atheism. Adoption of any one of those forms would necessarily have antagonised the followers of the other forms of Hinduism[16]. Hindus are fragmented into a number of castes with several denominations, sections and castes and so they too needed secularism.[17]

The Indian conception of secularism is different from the Western conception of secularism, in this that Western conception of secularism connotes separation of the State from the Church, whereas Hindu conception of secularism means acceptance of all religions. Indian nationalists interpret secularism as loyalty to the nation in preference to a religion, only so far as certain spheres of life are concerned[18]. The Western notion of secularism presupposes the existence of a Church. But, in India, there is no specific Church.

P. B. Gajendragadkar writes that our secularism 'subscribes to the Hindu philosophical tenets that all religions have elements of truth and no religion can claim the monopoly of truth. From ancient times Hindu philosophers have consistently proclaimed that all religions lead to God and, unlike some other religions, Hinduism has never put forth the claim that it alone is the true religion. The spirit of toleration is the foundation of the theory of secularism'[19]. Cantwell Smith says of Hindu concept of secularism in these words : 'But the Hindus with their caste system, negate their intellectual breadth by a social intolerance that is the most rigid in the world. Christians and Muslims may officially believe that the outsider is going to hell after he dies (with an insolent doctrine which they will have to abandon). Yet they are both quite happy to shake hands with him, entertain him at a meal, and treat him on a level of social equality. Officially Hindu teaching may accord him equal status in the next world, but in this world treats him as 'unclean' with a contempt and distance that are equally insolent and more obtrusive'[20].

Presumably, based on the above assurances given to Muslims by the leaders in the Constituent Assembly, Muslim representatives contended before our Commission that inspite of the fundamental

rights to religion and the declaration of secular principles, the partition of India has had harmful effect on their community. According to them, inspite of the fact that they remained in India by supporting Gandhi and Nehru they are horrified by the attitude of some of the Hindus towards them. An atmosphere of suspicion and distrust has prevailed, and the result is their educational and economic backwardness. They say some Hindus blame Muslim Indians for partition and suspect them of being Pakistanis at heart. The persecution of Hindus in Pakistan and their virtual elimination from West Pakistan, the Pakistan invasion of Kashmir etc., have intensified the bitterness of the Hindus. Muslims expressed that they are entertaining a sense of insecurity.

The President-appointed Backward Classes Commission under Art. 340 had, Mr. Abdul Quaiyum Ansari, a Muslim member on it. The said Commission decided that Muslim community as such was not to be treated as a Backward Class. In none of the States and the Union Territories of India the Kalelkar Commission treated either Muslims or Chirstians as a Backward Class. Our Commission drew the attention of the representatives of the Central Muslim Association, who gave evidence before us, to the Report of the President-appointed Commission.

Muslims *in toto* cannot be considered to be ' socially backward ' in the conventional sense known to Hindu society. Their evidence before the Commission is also to the same effect. They blamed their representatives on the Constituent Assembly for the ineffective role they played.

The Commission has categorised only such of the Hindu castes and communities as educationally backward, whose student average of passing SSLC in 1972 is below the State average. Muslim student average at the said examination is, no doubt, below the State average, and therefore they are, as a community, educationally not advanced. In view of the fact that the Constituent Assembly did not think of religious minorities as coming within the meaning of the expression ' Backward Classes ', our Commission cannot designate them as educationally a ' backward class '. So far as the social level of the Muslim community is concerned, applying the economic test, it is also in a way improverished compared with the Hindu castes which the Commission has treated as socially and economically backward.

At least from 1908 Muslims have been treated as a religious minority separate and distinct from the Depressed and the Backward Classes.

The latest judgment of the Supreme Court in Civil Appeal No. 1160/1974, in the *State of Kerala* and *another* vs. *M. N. Thomas*

and *others,* dated 19th September 1975, (not yet reported) particularly the separate judgment of Justice S. Murtaza Fazal Ali, seems to suggest that reservation to the extent of 80 per cent is permissible and the population to the extent of 80 per cent of a State could be treated as backward. The majority judgment also seems to suggest that classification could be made under Art. 14, and benefits extended to those who satisfy the reasonableness of the classification.

Our Commission has treated about 45 per cent of the State population, besides about 14 per cent population of the Scheduled Castes and Scheduled Tribes, as socially and educationally backward classes for purposes of Art. 15(4), and still less for purposes of Art. 16(4). Muslims in Karnataka constitute about 10.63 per cent. The percentage of Hindu population in our State being 86, about 51 percent of the Hindu population is treated backward. Here again, reservation for about 51 percent of the Hindu population is only 32 per cent. Therefore, in the event of Muslims being classified as a separate category under Art. 14 for purposes of reservation in educational institutions and government services, (we make clear that such reservation cannot fall within the scope of clause 4 of Art. 15 and clause 4 of Art. 16), the maximum reservation to the Muslim community could be about 6 per cent. We have already included some Muslim tribes in the list of *Backward Tribes.*

If the claim of the Muslims that their entire community should be treated ' backward ' and adequate reservation in educational institutions and Government services proportionate to their population be made is to be accepted, on similar arguments, the entire Hindu community of 86 per cent may justifiably claim backwardness with reservation to the extent of 86 per cent. Therefore, the Commission recommends that as could be done in the case of Hindu backward classes under Art. 15(4) and 16(4), benefits could be extended to Muslims to the extent of 6 per cent by classifying them as a religious minority under Art. 14. After realising that Muslims do not come within the meaning of the term Backward Classes, except the known and readily distinguishable groups among them, whom the Commission has treated as Backward Tribes, Muslim leaders requested the Commission to recommend to the State Government to strive for constitutional amendment. Our Commission does not consider that amendment to the Constitution is necessary in view of the latest judgment of the Supreme Court referred to above.

The Commission also found that representation of Muslims in services is gradually decreasing. They do not have adequate representation. Their grievance that after Independence their educational level and representation in services is declining appears to be genuine. We, therefore, recommend to the Government to treat Muslims as a religious minority deserving reservation in educational institutions and Government services. The classification of

Muslims as a distinct and separate category seems permissible under Art. 14. The Commission recommends that, in that event, reservation to Muslims should not exceed 6 per cent.

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10. C.A.D. Vol. VIII, pp. 300-303.

11. C.A.D. Vol. VIII, pp. 351-54.

12. C.A.D. Vol. VII, pp. 822-24.

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CHAPTER XX

EDUCATION

What it ought to be:

Education, as we understand it, means the bringing up of all the individuals of every caste and community by imparting them systematic instructions in agriculture, crafts, science, medicine, engineering, law, technology, literature, arts, etc., for the development of their mental powers and character, and consequently of all the castes and communities of our multi-religious, multi-racial and caste-ridden society. Confining education, on the ground of meagre resources of the State, to some branches of learning or on the ground of the so called theory of merit to a few of the hereditary communal groups, would be restricting its real content, concept and scope. Such attempts have been successfully made in our society by the vested interests confining all knowledge in all branches of learning, including higher studies, to themselves, keeping the vast masses in total ignorance. In India, a great bulk of the population has been kept suppressed due to religious taboos and race and caste distinctions. In the suppression of those classes the vested interest-groups also have sunk to some extent, thus keeping the country in poverty, misery and disease.

Education is an organism, capable of satisfying the requirements of any society. Educationists and economic planners must constantly define the objectives and the content of education, and the methods by which it should satisfy the requirements of our society as a whole.

We are producing the educated disproportionate to the needs of our economy. And we have kept our economy so low that even the meagre number of the educated we produce cannot be absorbed. There is a drawback in our economic planning which presents a dismal picture. Improper economic planning has already imperilled the balance of our society. The situation calls for an all-round effort for the improvement of our people.

It is necessary to prevent economic, intellectual and social disparity from becoming more acute, and achieve a certain level of social welfare and the education of all castes and communities. It is only then that our democracy becomes accessible to all people. We cannot forget that education of the weaker sections cannot be regarded hereafter merely as a matter of charity or benevolence. What is to be feared is the painful prospect of the existing grievous inequalities, privations and sufferings being further perpetuated in our society.

If we take an overall look at the evolution of educational activity in India through time, we cannot fail to see that the said activity has hampered economic progress, and consequently evolution in production techniques. It has also split our society into stronger and weaker castes, into masters and servants and superhuman and subhuman. The situation has resulted in conflict and disaster; it has dehumanized the upper and the oppressed castes alike. Harm done to the oppressed has harmed the upper castes as well.

Due to the impact of Western education we cannot remain a stable agrarian society and we cannot remain contented only with the transmission of traditional professional skills and values to our generation. It has given rise to new special problems of its own in social, economic, educational and religious fields. After Independence economic progress has, no doubt, assumed a certain phase. Educational system should necessarily dispense an increasing amount of knowledge to an increasing number of people, since more elaborate processes of production require more skilled labour. Such knowledge will give scope for people with inventive and innovative minds to emerge. People, when educated, tend to assert their claims for social equality, since education stimulates social change. This evolution is, of course, long-drawn out, because social progress, being slow, is presently imperceptible.

So far as the economy, welfare and standards of living are concerned, the weaker sections are unwilling to resign themselves to inequality dividing caste from caste or class from class, or to frustration afflicting them, as they did in the olden days when all was accepted as an arrangement by God, or as the natural order of things. Nor are they prepared to resign themselves any more and any longer readily to educational under-development, since they have come to believe that universalization of education is their absolute weapon for the achievement of an economic 'take-over' and the recovery of the lost ground.

The task of the Government is to give support to educational requirements of all our people as otherwise there cannot, and will not, be a democratic and an egalitarian relationship amongst castes, or classes now divided by extreme inequality in status, income and education.

In our social order in which caste or class differentiation has grown sharply defined, the vested interests have been seeking to confine knowledge to themselves. Successively successful attempts to confine knowledge only to particular sections resulted in restricting knowledge within narrow limits. But the weaker sections demand democratization of knowledge.

The present system and working of our educational policy has helped widening the educational gulf between castes, and between classes.

Though the base of primary education is said to be broadening, and the time spent is lengthening, the involvement of the children of the weaker sections is far less and narrow, and at delayed age. The drop-outs and stagnation are large in number in the lower sections. The number at the higher stages is almost nil; there is neither vertical nor horizontal growth with the weaker sections.

The present day education, being the product of structures and traditions inherited from the past, is incapable of meeting the demands now being made by the weaker sections. The State Education Department and the Education Directorate are, no doubt, publishing every year the quantitative and qualitative facts showing the constant increase in the demand and the expansion of the educational facilities. But our facts depict the picture that this increase and expansion has led to the flagrant inequality between the raural and the urban, between the poor and the rich, between the lower castes and the upper castes in the distribution of available educational facilities and the resources.

Every society is in need of educated candidates specialised in certain branches, and at varying levels, of learning. This need arises, *inter alia,* from the economy. And the important source to generate educational urge in the people and specialisation in certain branches is the State itself which requires personnel for administrative purposes. The most positive reason for the State to spread education among the people is to raise their cultural level and to create conditions for their effective participation in democratic processes. The correlation between the needs of the society and the State on the one hand, and the supply on the other may not always be harmonious. Even when there is such harmony, there is bound to be injudicious disequilibrium between castes and communities. In some societies social and economic needs may exceed the supply. In some others, supply may be greater than the need and the demand. Ours is a society in which the social, economic and administrative needs could be more, if we develop our economy, but the demand now is very less. This is one angle from which the disharmony is noticeable. While we look at the quantum and quality of supply from various sources, such as rural and urban, and advanced communities and backward communities, the disharmoney and disequilibrium is conspicuously pronounced. The supply by two or three communities alone is so large quantitatively and qualitatively that it possibly exceeds the entire Government demand. Hence, the Schools and Colleges and all other institutions are acting as sieves at every stage of educational career filtering children with an object of selecting for higher levels. The result is the selection of children of the higher castes.

Education should be looked upon as a means to a wider range of economic and social objectives and it should use the resources

so that it is effective in satisfying the needs of all sections of our society.

The demand by the weaker sections for education is now increasing. Pupils of all communities on one level strive to reach the level above. Parents want their children to have education, though they themselves had no education. Education is the primary instrument in social mobility, even if the employment opportunities it professes to provide turn out to be disappointing. University degrees and diplomas are becoming substitutes for statuses and privileges customarily recognised in our society in which hierarchical social structures have still survived.

The demand for education is of unprecedented dimensions and strength. This evolution is taking place in many castes and communities of our society, whatever their level of economic development. But amongst some of the weaker sections almost hundred per cent of the children of primary school age are condemned.

The term "merit" or "aptitude" or "efficiency" is given a calculatedly poor and restricted definition. Its present day definition is intended to reserve education and administrative services to a few specific castes. The system of selection of pupils for admissions to higher levels and of candidates for administrative posts is aimed at co-opting only from the advanced castes. The system and its modes of selection are intended to exclude the pupils of weaker sections on the ground of want of aptitude or merit, and drawing the pupils of the advanced castes; merit and aptitude are being defined and prescribed by the vested interests. When the weaker sections express dissatisfaction and resentment at the consequence of the system the vested interests argue that such is not the aim of the system.

The criteria to assess the academic performance and the factors for prescribing a particular criterion are determined, and the restictions of the criteria are imposed, by the higher castes. The necessary result is the total, or almost total, exclusion of the children of the weaker sections. The concept of 'social advancement through education' is typical of our hierarchically stratified society, and the present system of selection is devised to perpetuate, and indeed it has perpetuated, the caste disparities and social imbalance. The well established vested interests have adopted a pleasant equitable mode of choosing a great majority from among their own offspring, but occasionally adopting the method of picking and choosing a very small number from the middle and lower-middle castes to avoid the selection being decried as scandalously caste biased. They proclaim the selections as being based on validly prescribed competitive examinations eschewing caste and religious considerations, but they fail to conceive of methods of democratizing education in our rigidly stratified society.

Our education system which is evolved by the vested interests reflects the features of our society. In an unjust and unequal society such as ours it has become impossible to hope for a rational and human education. Our society is woven out of religious privileges, social discriminations and economic disparities. It has failed to develop a democratic education system.

It is undeniable, and facts prove, that as a result of contradictions in our social system the educational system has been rendered impotent. It has become impossible to break out of the vicious circle of social and economic backwardness and the inequality and disequilibrium in the educational development without an effective attempt to deal with the problems simultaneously.

The weaker sections have come to regard as hypocrisy in the vested interests, their use of smoke-screen phrases describing our society as a 'casteless and classless' one, to cloak the real injustice which is outrageous. Our educational institutions have become hives of injustice and discrimination.

Spread and intensification of high school, college and university education varies from district to district and from area to area, depending upon the strength of a caste or community in the district or the area. Certain sectors of education like engineering and medicine are highly privileged and they are practically reserved to privileged castes and communities. Children of the economically poor parents and of the lower castes suffering social disabilities are discriminated against from the very outset who lack care of primary school education and mental requirements. The present form of selection for promotion to higher ladders which is biased in favour of the upper castes, rich and urban people, and which is highly arbitrary, has acted as an irremediable handicap preventing the weaker sections from continuing their higher studies. There is thus a complete reversal of educational justice to the most underprivileged. They are the first to be denied the opportunity to education and the present system cannot claim pride in the so called universality of its aim. Students of the economically poor families of the agriculturists, artisans, workers and labourers in the rural parts and particularly the students of the lower castes have to discontinue their studies prematurely. Their homes are over-crowded, hygiene is bad and food is poor. Vested interests have kept these considerations apart while proclaiming equalization of opportunities for education. The true aim of educational equalization is judged, not by providing the so called equal opportunities but, by the equal outcomes from all castes and communitiees at all levels and from all sectors.

The present educational system is described as democratic, because the 'legal' methods of admission and promotions are democratic, but the factual disparities prove that the fundamental

approach in the system is highly undemocratic. The rights of merit derived from privileges from birth and fortune, due to historical reasons and socio-cultural advantages, are set against the hopes and aspirations of the weaker sections to conceal the real problem. The entire educational system is formulated and run by narrow-minded people.

The present education policy is professed by some to be one of creating a secular, democratic and socialist society but they could not conceal from us the traditional relics it has inherited from the past.

—A historical evolution

The caste system has largely confined almost all groups in different fields of activity, although all the members of a caste do not have the same natural aptitude.

From the dawn of Indian history, education has been a concern of religious functionaries. It tended to confine only to the Brahmin caste creating a gulf between Brahmins and the rest of the population. Brahmins were satisfied with the position of superiority they had secured. However, the rulers, the feudal chiefs, and the rich merchants sponsored and supported the finer crafts, higher education and cultural pursuits generally.

Hinduism has been dominant on the Indian peninsula for more than three thousand years. According to Hindu traditions, education was exclusively or mainly the prerogative of one social group, the Brahmins, who were the highest ranking caste according to the scriptures. Knowledge was sacred and was held secret from the non-Brahmins. Although the Brahmins continued to be commonly honoured as priests responsible for religious functions, princes, feudal chiefs, noblemen, and merchants, who were non-Brahmins, at times, acquired sufficient power and wealth to enable them to raise an effective demand for the education of their children and of those who were to be employed as military officers, managers, architects, engineers, physicians and so on. The education needed was in administration, warfare, trade, construction of all sorts and the curing of illness. As a result the educated upper strata came into existence; the Brahmins could not preserve their monopoly over all learning and education. The gradual growth of scholarship and higher education outside the religious field was encouraged by cultural interests and the royal courts only in the upper strata. Buddhism and Jainism reached their manifestations in about the same era. These movements which were generally more ethical philosophies than religious, influenced and stimulated Hinduism. Though these religions held the scriptures sacred education was not thought of as a private property of one caste. Buddhism and Jainism condemned caste and the Brahmins' attempt to monopolise teaching. Some of the Buddhist monasteries grew into large institutions of learning and education.

Islam came to India in the wake of conquest. As a result of pressures or appeals to opportunistic interests, certain communities or castes were converted, without much spiritual preparation. It was the religious duty of those who had faith in the Koran to educate the young, but this duty was never carried out on a large scale. Many mosques, particularly the large ones, came to have elementary and sometimes more advanced courses of study affiliated with them. The Hindu tradition influenced Islam, and the result was the religious functionaries served as teachers. It was unlikely that many Muslim children attended the schools at mosques, or at any rate attended them regularly. So far as Hindu masses were concerned, no improvements were created in regard to their education. In the 19th century, Western impact on education was brought about by the missionaries without much help from, and often against obstacles raised by, the authorities. Education was not an affair of the State and it was left to the private people with the assistance of the rulers, merchants and well-to-do people. The East India Company, which gradually extended its dominion over the subcontinent, was given occassional vague directions that it should support the missionaries' efforts to spread the gospel among the natives. But there was never the close tie between the Church and the authorities. The reason was that the Company and its officers felt almost no urge to establish schools, spread literacy and improve popular education. The missionaries who had felt this urge and acted accordingly, only hoped for a benevolent hands-off attitude on the part of the political authorities. Their activity was often viewed as a nuisance or a political danger to be restrained or suppressed.

It is interesting to note that the missions were mostly supported and manned by people in the lower social strata, while the British colonial officials were almost exclusively of the upper class. The Indian upper strata, with whom the colonial officials had ties, were disturbed by the fact that the missionaries did not, in principle, recognize caste, and in practice often worked most effectively with the lower castes and the untouchables. Missionaries took up the cause of the education of the converts to Christianity by establishing schools and colleges. It was the missionaries who introduced printing in vernacular langauges. They came to be better supported by the Indian Princely Rulers than by the British East India Company. Sometimes their schools were subsidised by such Princely Rulers. The Indian upper strata took critical view of the missionary activities, as most of them do even to-day. It must not be forgotten that for centuries the missionaries were the only force working for the improvement of popular education in India.

Eventually, the British colonial authorities came to take interest in the secondary and higher education. During 1760s and 1770s they began to give financial aid to Hindu and Muslim Institutions of higher learning, and this practice was encouraged by the East India

Company Charters. The Government Press established in 1824 printed books in Sanskrit, Persian and Arabic languages. Behind this policy was the political desire to win freinds among the upper strata of the Hindus and the Muslims. In a most dramatic way it was decided in 1835 that all funds appropriated for education should be employed to provide English education with classes conducted in English language. The policy till 1835 was focussed on the Hindu and Muslim culture to satisfy the upper strata.

Now the question was whether the said cultures of the upper strata should be preserved and promoted, or whether they should be replaced by Westernized culture. Even here, in regard to the language of instruction the choice was between English and the Indian classical languages of Sanskrit, Persian and Arabic, but not the vernacular languages of the people. The shift to the new policy was because the British authorities needed to employ indigenous persons in the administration, and they wanted spread of English civilization among the upper strata of the Indian people. Some articulate Indians of the upper strata strongly felt that Wesernization of Indian culture was needed. It should not be overlooked that the growing demand for an English education was from the very upper strata of Indians who had once been obliged to have Persian education in order to be employed in public offices. The insistence by the upper strata paid off when the British began to follow the policy of giving properly qualified Indians access to responsible posts in the administration. Most of the educated men easily got comfortable jobs under the Government and were more absorbed in bettering their own prospects than in sharing their learning with the masses. The upper strata amongst the Indians themselves did not demand anything to be done to educate the masses. When the demands for education of the masses were later raised they were ineffective in practice. In the field of Secondary Education the policy decision of 1835 opened up an era of rapid expansion of school facilities that has continued to this day with accelerating speed. The colonial Government preferred to subsidize private schools rather than to found public schools. The schools were not however free of cost to the students. The missionaries securing Government grant-in-aid began to multiply the schools. Many took advantage of this opportunity. Schools and Colleges were established in many parts of the country. The Secondary Education Commission observed in its Report (1953):

> the establishment of Universities in the year 1857 had far reaching consequences especially on the content, range and scope of secondary education. The universities dominated secondary schools in every respect .... the Matriculation Examination began to dominate, not only secondary education but even the education imparted in primary schools.

The whole system was determined by the fact that degrees were the passports to government service. "Education was imparted with the limited object of preparing pupils to join the service and not for life". The teaching was of the 'academic' or 'literary' type. Little attention was given to science and still less to technical and vocational subjects. Some Law, Medical and Engineering Schools were established for the express utilitarian purpose of training individuals for the subordinate ranks of the administration and for the professions where talent was scarce.

This system of education was reviewed from time to time by Commissions, Committees and special Consultants, but the same tradition has continued even to this day. It was commonly concluded that there should be more technical and vocational training in the secondary schools, but such proposals had not been implemented to any significant extent during the British era.

A plea was made that something substantial be done in the field of popular education. The 1854 Wood's Educational Despatch observed:

> ..... Our education should not be directed to a consideration, if possible still more important (than secondary and higher education) and one which has been hitherto, we are bound to admit, too much neglected, namely, how useful and practical knowledge suited to every station of life, may be best conveyed to the great mass of the people who are utterly incapable of obtaining any education worthy of the name by their unaided efforts; and we desire to see the active measures of Government more especially directed for the future of this object, for the attainment of which we are ready to sanction a considerable increase of expenditure.

This document, rightly called the 'Magna Charta of Indian Education', had practically no effect. Again the Commission of 1882 recommended strenuous efforts to spread primary education as widely as possible. Curzon who is described as the strongest advocate of popular education and of modernization of the system of secondary and higher education gave higher priority to raising the quality of Indian education than expanding it. The colonial rule in India ended leaving the mass of people in general ignorance.

There is a traditional contempt for manual and menial work, and the educated tend to regard their education as the badge that relieves them of any obligation to soil their hands. In India, the Brahmin prescriptions against ploughing and various other types of manual work have helped to strengthen this prejudice. This attitude constitutes a large part of the problem of the educated unemployed. The downgrading of manual work and the practice of using education as an excuse to avoid it is a very serious obstacle to development. All

reformers recognize this fact and regularly proclaim the need to establish the dignity of work. Another legacy of the colonial era is the organization of the school system that is not conducive to education reform. Many schools are private institutions administered by the missions or religious and denominational groups. The winning of Independence has not worked any miraculous change in people and the society. The existing educational establishments are a part of a large institutional system, which includes social stratification such as caste, and this system is supported by people's attitude.

The financial expenditures incurred by the State on education could be measured according to the inputs amongst different castes and communities, and the spread of those expenditures at different levels, and for different sectors of education. No such study is made for the reasons that it would expose who the beneficiaries are and to what extent.

The colonial Government preserved the insuperable barriers between the entrenched upper castes and the masses by educating the upper castes and neglecting popular education. It created new privileges in the already privileged castes.

Our education policy has been, in great measure, of giving importance to literary character in line with the colonial power's disinterest in encouraging indigenous industries and agriculture.

The educational system was dominated by the Colleges, giving the general, non-professional third stage education required for entering public service, which the upper castes welcomed. Such education gave status in society and it ignored practical training for life and work. The Mudaliar Commission on Secondary Education explained:

> The dominating influence of University requirements on the one hand and the .... present methods of recruitment (for public service) on the other, have had an adverse effect not only on healthy development of secondary education but on the whole field of education in the country.

Students, parents, administrators and teachers who are mostly from the upper strata of the society have been resisting change in the curriculum at all levels, especially the proposals that would give greater emphasis to vocational training at the secondary and tertiary levels. The effective demand for education comes from the educated and the articulate upper classes and they decide upon the type of education that suits them. J. P. Naik, one of India's most distinguished educationists, later Member-Secretary of the Education Commission, 1966, expressed:

> What has happended (in India) in the last sixteen years is merely an expansion of the earlier system with a few marginal changes in content and technique.

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'The meaning of independence has not worked great changes in the people or in the society. The educational establishment is part of the larger institutional system which includes the social and economic stratification, the distribution of poverty and the power structure'.

The worst legacy from the colonial times is the establishment of private educational institutions which are mostly aided from the State Exchequer. This has raised grave problems of direction, supervision and control. Our educational system embodies strong vested interests who do not want to undermine the bolstering of their positions they have acquired under the inherited traditional system.

Literacy is a basic necessity for acquiring higher skills in all occupatins, including agriculture. But the providing of elementary schooling for all children is postponed on the ground that it is a burdensome project. The children of elementary school-age form a much larger percentage of the student population. School buildings, teachers, text books, writing paper etc., which are needed for the spread of literacy are all said to be in shortage, but secondary and college education has been expanded faster. The secondary schooling is many times more expensive than the primary schooling, and the college education is still many times more expensive than the secondary schooling. The higher types of educational institutions cater to the hierarchically higher classes and the system is determined by those who have been acquiring administrative power under an unegalitarian economic and social stratification.

Children of the agriculturists, artisans and low castes who happen to be enrolled in the first grade of primary school drop out early, or do not attend the school regularly. If they do not drop out, they become repeaters. Repeating is often a prelude to dropping out. Ordinarily more than one-half the children from the poorer classes and low castes who originally enrolled drop out from the primary school. And those who do not complete the primary school do not attain even functional literacy. Such children again lapse into illiteracy. The Kothari Commission, 1966, concluded that :

> the system of primary education (in India) continues to be largely ineffective and wasteful and many children who pass through it either do not attain functional literacy or lapse into illiteracy soon afterwards. If we are to continue our dependence on this programme alone for the liquidation of illiteracy, we may not reach our goal even by 2000 A.D.

Irregular attendance, repeating and dropping out represent a huge wastage of resources. The Karnataka Compulsory Primary Education Act of 1961 is not enforced fully and effectively. Studies to measure the number of drop outs and repeaters from different castes have not been made.

Many of the teachers are not well trained in the real sense of the word, and many of those who are ' trained ' tend to be concentrated in the cities. The salaries of teachers in primary schools are low. There is an urgent need for improvement of the Teacher Training Schools, while at the same time raising the economic status of the teachers in primary schools to attract the talented young people to enter the profession.

Generally pupils at the primary school level in rural areas are not given sufficient preparation as a result of which they suffer a serious handicap at the secondary school level. In urban areas the secondary schools are proportionately large in number and their pupils are drawn from the upper castes, rich families, the class of Government servants and the professionals. The result is the wide educational gulf between the upper classes and the lower classes. The vested interests do not want any change in the system. The traditionally superior classes despise manual work, and they being articulate do not want practical and vocational orientation of the secondary education. At the secondary school level also drop outs and repeaters in great majority have their origin from the rural areas, economically poor families and the low castes.

Those who reach the College level are generally from the rich families and upper castes. Paradoxically, huge investments on buildings, libraries, laboratories, equipments and teaching aids are made with the grants from the State Exchequer. Very few students from the poor families and low castes enter the College, but most of them never graduate, or a very small few who graduate fail to secure ranks. The high level of wastage percentages both at the secondary schools and colleges are contributed by them.

Technical schools, engineering and medical colleges being few in number with restricted in-take capacity, admission is open to those who have merit, who pay heavy capitation fees and who produce certificates evidencing low economic income of their parents, without reference to their social and educational status, caste or community. Merit in the last two categories is totally ignored. The result is the reservation of those colleges for the merited and the rich castes, and also for the poor families in upper castes.

But the large number of other types of Colleges continue to produce an over supply of graduates who are taught humanities, law, social sciences and academic science, who swell the ranks of unqualified administrators, clerks and the educated unemployed. Here too the pattern is the same. Indeed, by far the most important industry in the country, agriculture, is particularly disfavoured and neglected.

Monopoly of education particularly by the private institutions is the most fundamental basis of inequality. Even among the fewer

children drawn from rural areas, poor families and the low castes enrolled in the primary schools, we notice irregular attendance, repeating and drop out most frequently. Very small percentage of children of those families and castes complete the primary school, which is of lower quality. At this early stage of education a subtle process of elimination is at work which tends to exclude the less privileged groups. The drop outs and failures in the secondary schools imply a further selection along the same lines. A minority number of these categories enter the colleges. There again, the pattern is repeated. This in-built bias strongly favours the upper classes fortifying their monopoly on education. P. C. Mahalanobis, thinking of higher education in India, but aware of the fact that the bias starts at the primary school observes :

> By and large, it is the rich people who have the opportunity of giving their children the type of education required for posts of influence and responsibility in the country.
>
> The power and the privileges of a small group of people at the top tend to be not only preserved but strengthened ..... this has created an influential group of people who naturally desire to maintain their privileged position and power.

J. P. Naik, says :

> ..... the largest beneficiaries of our system of education are boys, the people in urban areas, and the middle and upper classes .... Educational development is benefitting the "haves" more than the " have-nots ". This is a negation of social justice and planning proper.

The Report of the Education Commission, 1966, stressed :

> .... The social distance between the rich and the poor, the educated and the uneducated is large and is tending to widen .... education itself is tending to increase social segregation and widen class distinctions .... What is worse, this segregation is tending to widen the gulf between the classes and the masses.

The harsh inequality in India—stratified and continually strengthened through the virtual monopoly of the upper class on education—has tended to emasculate reforms meant to democratize education.

Educational reforms are most needed in India but they are met with great resistance. Little power belongs to the poverty-stricken masses. The masses have remained inarticulate and passive. Their hunger for education is proved to be a myth. The Indian Education Commission Report, 1966, stresses

> Indian Education needs a drastic reconstruction, almost a revolution .... This calls for a determined and large scale action.

Tinkering with the existing situation, and moving forward with faltering steps and lack of faith can make things worse than before.

The distortion of educational efforts has its base in the social and economic and political stratification giving the small upper class a dominant position. Statuses and degrees are given undue importance reflecting a system of traditional evaluation peculiar to the hierarchical society.

In a traditional society like ours the division of labour is relatively simple. Production is carried on with the simple tools. Roles are based on the heriditary principle and the status or position of a person is ascribed on one's birth in a particular caste. Skills, techniques and knowledge are transmitted in the family, kin or caste.

In a modern society roles are based on one's achievements and merit acquired by qualification and training. Status or position is not ascriptive. Modern society expects educational institutions to disseminate instruction on a massive scale.

The colonial exogenous force undermined our traditional society. After Independence we have got to rely and we have relied upon the endogenous force for change from traditional society into a modern one. The factors and forces initiating and shaping social change must also influence educational policy. The Government and the vested interests appear to have considered education as a commodity to be supplied by schools and colleges, which could be purchased by the vested interests in various ways at different rates of price. The market is run by certain castes and communities under the guidance of their political leaders, religious heads, merchants and administrators.

The purchasers of the commodity are the rich and the advanced communities. The quality and quantity of the educational commodity depends upon the capacity of the vested interests to purchase it, and the caste of the customers.

Our Constitution has recognised the right to property as a fundamental one; the right to be a member of a religious community or caste as a fundamental right. Unfortunately it has not given any fundamental right to education.

The Constituent Assembly's device in granting fundamental right to religious and other minorities to run educational institutions of their choice has forced the Governments to continue the colonial method. The Constitution and the Government have permitted caste and community agencies to enter the market for supplying educational commodity to their members. The inducement by the

Government is in the form of granting aid to the privately run caste and community educational institutions.

Presently, as before, the agencies which supply education may broadly be classified in the following types :

(1) Government ;

(2) local bodies like Municipalities and Local Boards ;

(3) Christian missionary institutions ;

(4) private agencies composed of castes and religious communities ; and

(5) individuals.

Government is reducing its role in supplying the secondary and college education. It is not effectively implementing the free and compulsory primary education.

Local bodies like Municipalities and Taluk Development Boards are in the hands of the dominant communities. They too are not prominent in providing either primary or secondary or college education, though they could be aided by the Government and though they could levy local taxes.

Christian missionary institutions are mostly the units of international Christian organizations, and in Karnataka their predominant role in the supply of education at primary, secondary and college levels is in urban areas getting aid from foreign countries and collecting fees and donations from the students.

Private agencies are organised by caste and communal groups and their educational institutions are large in number.

Educational institutions run by individuals, though outwardly secular in their proclamations, are communal in the composition of their managing bodies and the staff.

This policy of recognising caste and communal agencies as suppliers of education has resulted in consequences which are significant. Educational institutions run by local bodies and Christian missionaries, though small in number, caste, communal and individual associations, which are large in number, have led to a great disparity and unevenness not only in the spread of education at all levels but also amongst castes and communities . Some of those institutions are providing education at high rates of fees and donations catering to the needs of small groups of students belonging to the advanced and the rich castes and communities.

Though the framework of supply of education is very much limited, it is largely the students from the upper castes who avail themselves of the uses of education in a much better way.

Education has become a passport for the jobs, both government and non-government, and office jobs are of non-manual and superior character. Non-manual in the sense that the hands are not soiled, and superior in the sense that they are not considered menial. This type of jobs our society is providing has necessarily attracted easily those castes and communities which are connected with non-manual and non-menial occupations in our traditional society.

Constitutional and economic policies have provided freedoms to practise any profession, to carry on any occupation, trade and business and to form associations and unions. There is thus a free atmosphere for trading, starting industries, carrying on banking activities, starting educational institutions and so on. Castes and communities who have been acquainted with such functions in our traditional society have been taking advantage of the situation. Professions like law, commerce, medicine and engineering which require educational qualifications and whose demand is increasing are being monopolised by certain upper castes and communities by availing themselves of all the opportunities afforded by the present policy of education. Caste and communal educational institutions have grown in large numbers providing education, libraries, hostels, scholarships and other amenities enabling members of their own caste and community to secure the education they need. Religious priests, politicians, merchants and administrators of certain communities are organizing themselves in starting increasing number of educational institutions with supply of finances, political patronage and grant of State aid. The managing bodies, the teaching staff, the students and the boarders in hostels belong to the particular caste or community which runs the educational institutions. They are thus supplying manpower for various categories of jobs which are emerging constantly. It is because of casteist and communal consciousness this competition for education and jobs has generated.

Though the curriculum appears basically secular, different and contradictory atmospheres prevail in those institutions.

Grant-in-aid policy has not made education a commodity available freely to all castes and communities. Fierce competition to secure posts in Government and politics through education, and to capture trade, commerce, industry and the professions has led to a competitive mentality amongst the higher castes. These caste and communal institutions do not and cannot think out programmes wherein members of other castes and communities like the backward ones could get the benefit.

The Directive Principles of State Policy contained in the Constitution have not been implemented in full measure, and wherever they are implemented in part they have opened up avenues in a network of government offices, departments and agencies.

Massive jobs at all levels have been created demanding personnel with training and equipment at different levels. The present educational institutions, majority of which are run by caste and communal agencies, have been supplying the said personnel. All higher jobs in offices are available only to the higher and the advanced communities.

N. V. Thirtha, Professor of Education, Bangalore University, states on the basis of the data he collected, that "Education, in the sense of formal schooling, in Mysore (Karnataka) was used by a small section of the population mostly belonging to a few upper castes upto 1930 for achieving status and mobility. From the thirties onwards the popular movement against the upper castes gained strength. The results of such a movement were the progressive replacement of upper castes by the lower castes, the mutual rivalries of the lower competing castes to replace the traditionally-held upper caste positions and the enormous spill-over of educated human resources which could not be accommodated in the traditional elite positions of the society.

This situation is evidenced by a variety of data in Mysore (Karnataka). The 600 per cent growth of denominations and caste educational institutions in the State from 1950 to 1968, the powerful caste lobbies that have developed in organisations of educational control at all levels and the deliberate lowering of educational standards to achieve the progressive replacement of upper castes in the recruitment of teachers and selection of scholars may be considered as some of the indicators of the new phase of popular demand for education in the State.

The consequence of such a situation for development education is the coupling of a demand for educational expansion and the caste competition for the achievement of traditional status through educational achievement".

The Report submitted by B. G. Halbar and T. N. Madan to the National Council of Educational Research and Training, Ministry of Education, Government of India, in April 1966 on "Caste and Educational Institutions in Mysore State" reveals the caste composition of managements of educational institutions, caste motive for making contributions and donations for educational purposes, recruitment of staff on caste and communal basis, award of scholarships and other facilities on caste and communal basis, the preponderance of students of particular castes in the institutions started by the respective castes and the caste policy of admission to those institutions, hostels and boarding houses and so forth. They opine that caste and religion are forces to be reckoned with in the educational field, as in political, economic or social relations. For their case study they had selected 210 educational institutions in the

districts of Belgaum, Dharwar and Mysore. They say " we are convinced that most of the observations on the studied sample will be applicable to the whole State as there is not much of difference in the pattern of educational facilities provided by the private bodies and their working as between the different parts of the State.....All that we may stress is that caste is a social fact, and needs to be studied in all its aspects ". In the course of their study they found that " while no sophisticated person wants to talk about caste in public or office ..... the very same preson may not hesitate to discuss in private the role of caste in marriage and politico-economic pressure groups". For want of sufficient time we have refrained from making use of the valuable and revealing materials they have collected. However, the mimeographed copies of monograph by Halbar/Madan and of Bradford confirm our conclusions that private educational institutions, have not helped the backward classes though they have rendered appreciable service to their own castes and communities.

So far as educational inequality amongst castes and communities is concerned, the Kothari Commission on Education observes :

> One of the important social objectives of education is to equalise opportunity, enabling the **backward or under privileged classes and individuals** to use education as a lever for improvement of their condition. Every society that values social justice and is anxious to improve the lot of common man and cultivate all available talent, must ensure progressive equality of opportunity to all sections of the population. This is the only guarantee for the building up of an egalitarian and human society in which the exploitation of the weak will be minimised.

Noticing the extreme educational inequality amongst castes and communities the Kothari Commission felt it necessary, on grounds of social justice as well as for furtherance of democracy, to suggest that ' special attention to the education of the children from the **backward classes** ' should be paid. In the opinion of the said Commission, **backward classes** include, amongst others, ' Scheduled Castes Scheduled Tribes, denotified communities and a few nomadic and semi-nomadic groups '.

For determining the educational backwardness of castes and communities we have totally ignored the principle of **caste** in the ritual hierarchy. In the hierarchy of educational attainments we noticed that the Scheduled Castes, Scheduled Tribes, denotified tribes and nomadic and semi-nomadic tribes occupy the lowest rank as they do in the ritual hierarchy. In the other strata we found a number of other castes and communities whose educational attainments are very much below the attainments made by the advanced castes and communities. However, we have determined as educationally

backward only those castes and communities, whose attainment at the 1972 April-S.S.L.C. Examination is below the State average.

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CHAPTER XXI

CIVIL SERVICE

The Indian Civil Service has its origin in the British system. The bureaucrats during the days of the British rule kept themselves aloof and authoritarian in order to differentiate the rulers from the ruled. The relics of the old habits are still seen in our Civil Service. The Indian Civil Service proved to be successful in holding the vast country together by enlisting members of different castes and communities and members of religious and linguistic minorities.

The advent of Independence has given greater importance, greater powers and greater privileges to the Indian bureaucrats. Politicians who become the Legislators and Ministers lack the experience of running the Government and administration. The Legislators and Ministers represent different castes, communities and religious and linguistic minorities. They have to depend upon the civil servants to carry on the affairs of the State. Composition of the Civil Service with a democratic bias is necessary when the nation has decided on a goal of democratic socialism for the country. Socialism consists in the control as well as ownership of economic means of production by the State. In practice, socialism means the management and running by the bureaucrats, of all the industrial and economic enterprises, undertaken by the State. Some of the hitherto run industrial and economic enterprises by the private sector are taken over by the Government. Many more such industrial and economic enterprises are likely to be taken over by the Government.

The implementation of the Five Year Plans has necessarily created more and more public sector undertakings. The management of such vast industrial and economic activities necessarily devolves on the Civil Service, and so the bureaucracy is growing larger and wider than ever before.

Constitution wants that we should function as a Welfare State, meaning thereby that the Sate should reduce the economic disparities between the higher and lower levels of income. In the social field, it aims at equalising all castes by abolishing the distinctions of high and low. Constitution directs the State that it should give compulsory and free education to all children below the age of 14. It also directs the State to provide free health and medical service, and to undertake community development and family planning schemes, to provide employment to all able-bodied persons and so on. It also wants the State to see that the national production is

equitably distributed. All these activities by the State have necessarily resulted in enormous increase in the number of employees under the State.

From the time of the British Rule to the framing of the Constitution various institutions of our public life like the Legislatures—Union and Provincial—administration, and even army were all representative institutions, in the sense, that provision of adequate representation on those institutions was made to the Muslim, Christian, Sikh, Parsee and Anglo-Indian communities and the Depressed Classes. By the adoption of the Constitution in 1949, the representative character of those institutions is not altered, though the number of communities to have statutory representations on those institutions is reduced. Statutory reservations to Muslims, Indian Christians, Sikhs and Parsees have been removed.

Representation of Depressed Classes, Tribes, and Anglo-Indians (in the form of nomination on the Assemblies and Parliament) is statutorily continued. The fact remains that the structural character of those institutions being representative is not changed.

The Constitution, so far as services under the State are concerned, directs that certain communal groups like the Scheduled Castes, Scheduled Tribes and Other Backward Classes shall adequately be represented. The provisions in the Constitution relating to the principle of representation to communal groups has relation to the backwardness of certain communal groups and the principle of adequacy of representation has relation to their population. State Legislatures and the Parliament should consist of adequate number of members belonging to Scheduled Castes and Scheduled Tribes, and in some State Assemblies and Parliament adequate number of members belonging to the Anglo-Indian community should be nominated.

Article 16(4), read with Article 335 and 338 (3), speaks of the adequacy of representation of the members of Scheduled Castes, Scheduled Tribes and Other Backward Classes in proportion to their population. In other words, so far as Tribes, Depressed and Other Backward Classes are concerned, their number at all levels of administration should have relation to their populations.

With this background we have to make an enquiry into the representation of communities in the State Services. Adequacy of representation of communities in the administration has a bearing on the efficiency of the services. Recruitment to various branches of services has been by open competition amongst those who possess the required educational qualifications and abilities, but the selection of the candidates with the required educational qualifications and abilities is from four different sources, namely, the Scheduled Castes, Scheduled

Tribes, Other Backward Classes and the rest. The proportion in which the Government servants are drawn from those four categories should correspond to the size of population of those communities in the State. That is the guarantee provided to those groups. No class is given a right to have a share larger than the adequate share.

If the figures of the Government servants belonging to different communities do not have relation to their size of population in the State, one has got to blame the recruitment policy, the educational policy, the social structure and the economic order of our society. The uneven communal distribution at every level in the administration cannot be said to be in accordance with the ideals of a democratic community and the long tradition followed from the time of the British Rule to achieve the ideal. Such unequal or uneven distribution does not satisfy the aspirations of all communal groups to enter the administrative services, and those who do not get their aspirations fulfilled will have discontentment. The non-Brahmin movement in the South in the 1920s is an instance of such discontentment exhibited by the vocal and the powerful among the 'backward classes'. The society as a whole has been eager to know how the theoretical equality of opportunity to enter the services is manifested in actuality or practice. It is also interested to know the causes for inequality in the services which have failed to accommodate the latent abilities of those communal groups who are kept out of the services, or who have no adequacy. Efficiency of administration consists, not in the monopoly of the services by a few communities but, in the satisfaction of the entire society that the administration has tapped the abilities of all communal groups. If there is under-representation or no representation of the Depressed and the Other Backward Classes, who form the lower strata of the society, it is necessary to infer that the interests of the services will suffer and it is necessary to infer that the qualities required are distributed unevenly among different communal groups. The administrative machinery reflects the pattern of society we have.

There are limitations in the merit system of recruitment. In sectors in which the merit system, in the sense of recruitment on the basis of ability and merit tested in an open competitive examination, is absent the Constitution has introduced the 'patronage system'. Offices of the Ministers, Governors, Members and Chairmen of the Public Service Commissions, Judges of the High Courts and Supreme Court etc., are outside the 'merit system', understood in the above sense.

Article 320 of the Constitution empowers the Governor of a State (and the President of India) to exclude certain categories of posts from the purview of the Public Service Commissions. Clause 4 of Article 320, in addition, provides for exclusion of consultation with the Public Service Commission in matters relating to the methods of recruitment, the principle to be followed in making

appointments, etc., so far as the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes are concerned. That is to say, the ' manner ' by which effect may be given to the claims of the backward classes under Article 16(4) read with Article 335, is left exclusively to the discretion of the Government. Therefore, the power that is vested in the Government under Article 16(4), in so far as the method and manner of making reservation of appointments in favour of backward classes are concerned, is *non obstante* and the State is free to adopt any method and any manner to give full effect to Article 16(4).

Although the Constitution came into force about 25 years back, the State Legislature has not made laws, regulating the recruitment and conditions of service of persons appointed to public services under Article 309 and regulating conditions of service of officers and servants of the High Court under Article 229(2). Rules or regulations have not been made by the Governor under Article 320 (4) in regard to the exclusion of consultation with the Public Service Commission in giving effect to Article 16(4) and Article 335. Omission on the part of the legislature and the Governor has resulted in great injustice to the Backward Classes including Scheduled Castes and Scheduled Tribes and the absence of those laws and regulations has given scope for arbitrary recruitment on caste and political considerations, ignoring the claims of the ' backward classes '.

Of the many, the two important modes of recruitment are ' direct recruitment ' and ' recruitment by promotion '. All the published recruitment rules of the Government Departments made under Article 309 show that unreasonably large number of posts are to be filled by promotion and relatively less number of posts are to be filled by direct recruitment. Even a casual glance at the Rules shows that about 50 per cent of the posts are to be filled by promotion (excluding Class IV which have got to be filled necessarily by direct recruitment and the posts of heads of departments and Secretaries to Government which are to be filled necessarily by promotion) and the remaining 50 per cent by direct recruitment. Higher the grade, greater is the quota to be filled by promotion. Although reservation has been made under Article 16(4), it is only in the categories of posts to be filled by the method of direct recruitment. Reservation of 15 per cent to Scheduled Castes out of the posts filled by direct recruitment in reality amounts to reservation of only 7½ per cen in the total strength. If reservation in only the direct recruitment quota is confined, Scheduled Castes and Scheduled Tribes can never hope to achieve adequacy even if reservation is to continue for 100 years. In truth, the quantum that is reserved for them is only half of what they adequately deserve. In any method of recruitment, whether by direct recruitment, or by selection, or by promotion, reservation should be made at all levels and in all departments, wherever inadequacy is noticed.

As regards the manner in which reservation under Article 16 (4) could be given effect to, Constitution does not prescribe, in explicit terms, that any particular mode be adopted. However, the spirit of the Constitution and the intention of the Constitution makers could be gathered from other provisions of the Constitution where similar reservation has been provided. In the case of appointment to certain Central Services, reservation for a period of 10 years had been made in favour of the Anglo-Indian community, and the members of the Anglo-Indian community securing posts or appointments on the ground of merit were not to be counted against the quota separately reserved for them. In other words, members of the Anglo-Indian community securing posts or appointments in the merit pool got those posts or appointments in addition to the minimum reservation quota. The State Assemblies and the Parliament are to be constituted also by members of the Scheduled Castes and Scheduled Tribes, and the number of seats reserved for them are in proportion to their populations in the State and the country, as the case may be. So far as the State of Karnataka is concerned, 27 and 2 seats in the Assembly are reserved for members of the Scheduled Castes and Scheduled Tribes rspectively, and 4 seats in the Parliament for members of the Scheduled Castes. If the present rule that is being followed by the Government in recruitment is to be applied to the constitution of the Assembly or Parliament a seat secured by a member of a Scheduled Caste or Scheduled Tribe from a general constituency shall have to be counted against the reserved quota in the Assembly or the Parliament, as the case may be. The method, if followed, unreasonably curtails or takes away the right of a member which is available to all, to get elected from the general constituency. Therefore, the method suggested by the Mysore High Court in Partha case, and adopted by the Government, is not in consonance with the spirit of the Constitution and intention of the Constitution makers. Such a method is not deduceable from the language of Article 16(4), besides it being against the explicit provision contained in Article 320 clause 4 by which the manner or the method of giving effect to the provisions of Article 16(4) is left to the discretion of the Government. Judiciary cannot direct the State to follow a particular method.

We suggest that adequate reservation for the three categories of backward classes proportionate to their population be made not only in the quota to be filled by direct recruitment but also in the quota to be filled by promotion or selection.

The counting of the candidates selected exclusively on the ground of their merit against the reserved quota is against the interests of the backward classes. So, we suggest that candidates selected in the merit pool should not be counted against the quota reserved for their category.

The long delay on the part of the State Legislature to make a law under Article 309 regulating recruitment and conditions of

persons serving under the State, amounting to abdication of the legislative power, has resulted in arbitrariness in the matter of recruitment, and similarly the absence of legislative enactment under Articlee 229 regulating the conditions of service of officers and staff on the High Court Establishment also amounts to the legislature abdicating its powers. We, therefore, recommend that the State Legislature should make laws under Articles 309 and 229.

The absence of rules or regulations under clause 4 of Article 320 has subjected the members of the backward classes to an unreasonable and extravagant tests of recruitment, and so, we hereby recommend that necessary rules or regulations be made by the Governor under Article 320(4).

We received a number of representations from Government servants belonging, perhaps, to the Backward Classes, Scheduled Castes and Scheduled Tribes complaining against the method of recording remarks in the confidential reports and the method of exercising the power under the Rule 285 of the Karnataka Civil Service Rules. Their complaint was that the higher posts are almost monopolised by the advanced classes and some of those officers and heads of departments are misusing the power given to them by confidentially recording adverse remarks against the members of the backward classes in the 'Confidential Records' and in compulsorily retiring them under Rule 285, K.C.S.R. Their complaint was that either while recording the adverse remarks in the Confidential Records or in retiring them compulsorily under Rule 285, K.C.S.R., no opportunity is required to be given. Their further complaint was, the vesting of such arbitrary powers is in violation of the principles of natural justice. We consider that in the present circumstances and the structure of the administration, vesting of such arbitrary powers must have given scope for their misuse. Even so, those provisions are outrageously violating the principles of natural justice. We, therefore, recommend that before recording adverse remarks in the Confidential Reports, opportunity should be given to the concerned official, and a further opportunity of appeal. Similarly, while retiring an officer compulsorily under Rule 285, K.C.S.R., an opportunity of notice and hearing be provided. Rules in that regard be suitably amended.

An interview, to become an important and integral part of open competition, must be allotted marks equal in number to the marks prescribed for the written examination or the qualifying examination. The merit of a candidate can be assessed better by his alertness, intelligence, intellectual outlook, his presence of mind and nervous equipoise. Quantum of marks at the interview/*viva voce* plays a significant part in remedying the deficiencies of the candidates coming from the rural areas, and the peasant, artisan and low castes who do not have adequate opportunities to prove their 'talents' at the written examination. Better performance at the University or

qualifying written examination is due to urban biased education. The present system of open competition has tended to deprive the backward communities, drawn mostly from the rural parts, of their adequate share in the administration, and the administration is not representative of the society at large.

Age limit for direct recruitment should be relaxed by 5 years in the case of Backward Classes also. And the age of superannuation in the case of Backward Classes, Scheduled Castes and Scheduled Tribes should be postponed by 5 years. The reasons are at least two. One, the age of entry of members of Backward Classes, Scheduled Castes and Scheduled Tribes at the primary level of schooling is delayed, and stagnation in their educational career is a general feature. So, many of the candidates belonging to Backward Classes, Scheduled Castes and Scheduled Tribes are eliminated from even taking their chance at the recruitment examination on the sole ground of age disqualification. Those, however, who are recruited, are on the verge of crossing the prescribed age limit, and so they will have to serve for lesser period with less or no chances of promotion. Seniority in a particular grade being one of the criteria for promotion, the members of the Backward Classes, Scheduled Castes and Scheduled Tribes will have no chance, or less chance, of promotion, before they reach the age of superannuation, which is the same for all. We, therefore, recommend that to provide necessary and adequate chances and opportunities of promotion to the members of Backward Classes, Scheduled Castes, Scheduled Tribes, the age of superannuation, in their case, be extended by five years.

Tutorial institutions be started, or coaching facilities in all Universities provided, for candidates belonging to Backward Classes, Scheduled Castes and Scheduled Tribes preparing them to successfully compete with the members of the advanced classes at the recruitment examinations.

This, in the long run. will help reducing the quota of reservation or its total abolition.

Reservations to Backward Classes, Scheduled Castes and Scheduled Tribes be made not only in Government services, but also in employment under public or semi-Government undertakings, private educational institutions receiving aid from the State, statutory or non-statutory Corporations. Boards, Committees, etc., Central Government Undertakings, Private undertakings, Nationalised Banks, etc. Private undertakings and financial institutions having their establishments or offices in the State, and who require aid or assistance from the State Government in one form or the other, in small or large measure, should be directed to make reservations to Backward Classes, Scheduled Castes, and Scheduled Tribes in the said proportion at all levels. Denial or failure should disentitle them to the facilities granted or co-operation extended in any form.

CHAPTER XXII

SUMMARY OF EVIDENCE

ANGLO-INDIAN

Frank Anthony, B.A., Barrister-at-law, Member of Parliament, President-in-Chief, All India Anglo-Indian Association, New Delhi, Senior Advocate of the Supreme Court, Ex-Member of the Central Legislature.
" Father of the Lok Sabha ".

" It could be said that the expression ' Backward Classes ' was not intended by the Constitutent Assembly to include sections outside the Hindu fold. The framers of the Constitution, while formulating provision for backward classes, were thinking of those sections in contradiction to communities which were not Hindus. The representatives of the Indian Christians did not make any claim for ' backward classes ', nor did the Muslims. So far as the Anglo-Indians were concerned, there was no question of my making any claim to the tag of backward class. It could be interpreted, from the debates in the Constituent Assembly and the Proceedings in Parliament when the Consitution came to be amended in 1951, and also from the Draft Constitution, that the non-Hindu groups were not intended to be treated as backward classes, because those who felt that they should not get protection as backward classes never put forward any claim. To-day because of the political developments everybody wishes to say that they are backward. Political considerations should not be taken as a basis. Scheduled Caste Christians are claiming to be given the benefits that are extended to the backward classes. It is not a correct step. It is difficult to identify their original caste when they were converted some decades ago. The clamour will then be from most of the Christians to the effect that their ancestors were Harijans ".

1. **L. A. Fullinfaw,** B.A., Chairman, All-India Progressive Anglo-Indian Social, Cultural, Educational and Economic Welfare Association, Bangalore. 2. **Oscar Thomas,** Vice-Chairman. 3. (Mrs.) **Winifred Joseph,** Member.

Although the Anglo-Indians are Christians by religion, they are a distinct community whose origin and culture are different from the rest of Christians.

The population of Anglo-Indians in Karnataka is about 6,000, out of which 5,000 are to be found in Bangalore City, and the remaining 1,000 are to be found in Mysore, Hubli and K.G.F. They have

no traditional occupations. Schools in the State do not impart education suitable to the culture of the Anglo-Indians. Their style of life is distinct. Their mother-tongue is English.

Place of habitation of Anglo-Indian community is dirty, dingy and unhygienic. The problems of Anglo-Indians are different from those of the Scheduled Castes, Scheduled Tribes and other Backward Classes. By Article 338(3), Anglo-Indians are treated separately. The leaders of the Anglo-Indian community who were on the Constitutent Assembly were unable to say that Anglo-Indians are not different from the Other Backward Classes, and so, such a provision has gone in the Constitution. The Commission is requested to make a recommendation to the Government to treat the Anglo-Indian community separately from the Other Backward Classes and to make provision for them. Anglo-Indians go as Anglo-Indians in the Official records, not as Christians.

INDIAN CHRISTIAN

J. M. Lobo Prabhu, Ex-M.P., I.C.S. (Retd.), President, South Kanara Catholic Association, Mangalore.

Roman Catholics have not recognised caste. Nevertheless, in respect of marriages, restrictions are imposed on the basis of original caste. Broadly speaking, the Roman Catholics consist of Brahmins, Kshatriyas and Shudras. There are some tribals also. It is difficult to state the exact population of each of the castes. The origin of individuals or families to Brahmin, Kshatriya or Shudra caste cannot be traced and there have been inter-marriages amongst the educated and the rich. They do not observe social distinctions as Hindus do. They do not have the conventional notion of high and low. More than providing reservation in Government services, which might benefit only one per cent of the total population, the object of Government should be to guarantee the right to work and right to employment. The lists of Scheduled Castes and Scheduled Tribes are not exhaustive. Certain other castes deserve to be included in the lists of Scheduled Castes and Scheduled Tribes. Christian community had occupied an important place in Government services in the past, but at present, it has lost that place. During the last five or six years there is not one recruitment to the IAS from the Christian community. They have gone into private sector or into business. In Mangalore district, Roman Catholics run five colleges for boys and 16 High Schools. Christians have a feeling that after Independence they are being ignored by the majority community. They have lost representation. Before Independence, there was representation for the Christians by way of nomination. Communities which cannot get elected should be represented by nomination. The Constituent Assembly consisted of the representatives of Christians, Muslims, Anglo-Indians, Hindus and depressed classes who were elected by

the Provincial legislatures constituted by the members elected on separate communal electorates.

Qn. by Chairman : At the time of drafting the Constitution, Christian community intimated the Constituent Assembly that they should have no reservation on the ground of their religion, but they would be contented if the fundamental rights to them were given in the matter of their religion, culture and educational institutions. Am I correct ?

Answer : Your's, as a statement of fact, is correct, but the persons elevated to those positions were through nominations by Government. They did not represent the opinion of the community.

The Roman Catholics have no traditional occupations.

CONVERTS

1. **Most Rev. P. Arokiaswamy,** Archbishop of Bangalore, Bangalore. 2. **Rev. Fr. I. Anthappa,** Parish Priest, St. Therasa's Church, Bangalore-2. 3. **J. A. Sequeira,** District and Sessions Judge (Retd.), Bangalore.

Untouchable castes, such as Adi-Karnataka, Adi-Dravida, Adi-Andhra, Korama, Holeya, Madiga, Thoti, Voddar, Lamani, etc., and Backward Classes such as Thigala, Kumbara, Beda, Agasa, Kuruba, Golla, Banajiga, Viswakarma, Devanga, etc., have embraced Christianity, and their population is about 3 lakhs—both Catholic and Protestant. The total population of Christians in the State is 7 lakhs.

In religious matters Christians do not discriminate against the converts, but nevertheless *caste*-Hindus discriminate against the Harijan converts. *Caste*-Hindu temples are not open to Harijan converts. Brahmins do not render religious services to Harijan converts to Christianity. Hindu barbars and Hindu washermen refuse to render service to the Harijan converts.

There is hierarchy of castes in the Christian community. In Karnataka there are the Brahmin Christians and Harijan Christians. There is no inter-marriage as a rule. Low-caste Christians suffer from similar social taboos as low-caste Hindus suffer in the matter of inter-dining, drawing water from the well, and generally in regard to social intercourse. The Harijan converts are following their original traditional occupations, and the inferiority attached to the low occupations by Hindus is being attached to these groups also. Harijan converts are segregated in the village and they live sode-by-side with Hindu Untouchables. The social and economic conditions of Harijan converts are very much the same as they were before conversion. Harijan converts to Christianity still suffer from the stigma of Untouchability and suffer from the same disabilities as

their counter-parts. The backward castes who have embraced Christianity are half-way to Untouchability. Some of the Criminal Tribes who embraced Christianity still suffer from the same disabilities as before. The society in general looks down upon them.

1. **M. P. Alexander,** M.A., B.L., Ex-Deputy Secretary, Finance Department, Government of India, Ex-Deputy Secretary, Commerce and Industriaes Department, Government of India, Ex-Director of Indian Institute of Foreign Trade, President of the Catholic Association of Bangalore. 2. **John B. Kutinha,** Hon. Secretary, Catholic Association, Bangalore. 3. **J. Anthony,** Member of Executive Committee, Bangalore. 4. **B. M. Ratnaswamy,** Member of Executive Committee, Catholic Association, Bangalore.

In the former State of Mysore the entire Christian community was treated backward for purposes of reservation in educational institutions and posts in government services. In the Government of India Acts, 1921 and 1935, Christians, Muslims, Anglo-Indians and Sikhs had reservation in the Legislatures and they were given separate electtorates. "During the framing of the Constitution the Christian community represented to the Constituent Assembly that they did not want any special treatment, but they would be contented if rights to religion were regarded as fundamental. When the Christians came forward with this proposal, Muslims and Sikhs followed suit. However, the Anglo-Indians, being a separate section, were provided special facilities in the matter of reservation in Central Services like the Railways".

The Christian community was treated favourably during the British Rule.

Although Christians do not recognise the caste system, in practice, on account of the impact of Hinduism on Christianity, Christians too recognise the caste system. Majority of the converts to Christianity belong to low caste Hindus and they observe the principle of caste, *i.e.,* the principle of high and low, which they practised before their conversion, though Christianity as such does not believe in such principles. In Karnataka there are the Brahmin Christians, Sarodi Christians akin to Hindu Vaishyas and Shudras, and Gowda Christians who constitute an admixture of Hindu Untouchable converts. Till very recently there were separate Churches for the said four groups, but they were few in number. In some places separate wings were provided in the Church for Untouchable converts. The Hindu caste system has penetrated into the Christian society and the traces of discrimination between one group and the other is to be found in Christian society also.

There are no inter-caste marriages on universal scale. The social taboos in the matter of inter-dining etc., are to be found in

Christian society. In a way, Christian society has adopted some of the Hindu customs and manners, and it is imposing some social disabilities on certain sections. though not with the same rigour as the Hindu society imposes. The caste-Hindu barbers and washermen refuse to render their services to Harijan converts. There are no group conversions in Karnataka. It is not possible to give the approximate number of the converted castes. There are no marriages between the converted Adi-Karnatakas and the Hindu Adi-Karnatakas. There are rare cases of Harijan converts reverting to Hindusim. Anglo-Indians are different from the Christians. They are outside the pale of four-fold divisions of the Christian community. Very large number of educational institutions have been started by the Christians, and there are about 700 Churches in Karnataka. There are Colleges also run and administered by the Christians. However, admission is open to all. The management of these bodies is in the hands of Christians. Even the members of the Advisory or Consultative Bodies are mostly Christians. Most of the Colleges run by the Christians provide hostel facilities. The present Government Order of 1963 "classifying" individuals as backward on the basis of income and occupation has not benefitted the Christians. Not one Christian appears to have been benefitted either in getting admission to Medical or Engineering Colleges or entry into service.

M. J. Edwards, Leading Planner, Hindustan Aeronautics Ltd., Bangalore.

Non-Scheduled communities are obtaining false certificates to the effect that they belong to the Scheduled communities with a view to get reservation and educational aid.

Some of the Departments advertise posts exclusively for Scheduled Castes and Scheduled Tribes with a calculated motive of manoevering the results adverse to the interests of Scheduled Castes and Scheduled Tribes. Posts reserved and un-reserved should be advertised together to avoid the harm that is being caused to the Scheduled communities.

1. **C. J. Selvaraj,** President, Karnataka Scheduled Caste Christian Sangha, Bangalore. 2. **M. S. Arockiadass,** Joint Secretary. 3. **J. Arogyaswamy,** General Secretary. 4. **A. D. Balthasar Royan,** Treasurer. 5. **R. Abelraj,** Executive Member. 6. **S. K. Irudayaraj,** Executive Member. 7. **A. Thangaraj,** Executive Member. 8. **R. Francis,** Ex-Member. 9. **R. T. D'sa,** B.Sc., B.L., Advocate, Legal Adviser. 10. **D. Jayaraj,** Ex-Member.

In Karnataka the Adi-Karnataka, Adi-Andhra, Adi-Dravida, Madiga, Holeya, Chalavadi, Thoti and some other castes have embraced Christianity, and they have maintained their original caste identity. Such groups should be included in the list of Scheduled Castes under Art. 341.

A. Ebenezer, B.Sc., Municipal Councillor, Andersonpet, K.G.F., Member, Mysore Dasara Advisory Committee.

A Harijan embracing Christianity does not change his status, or improve his economic condition. The act of Baptism is just a superficial ceremony by which one changes his faith to Christianity. There are scavengers and sweepers not only in the Hindu community but also in the Christian and Muslim communities. The Bhangi caste is a hereditary caste, and therefore the Muslim and Christian sections who are following the occupation of scavenging have also become hereditary castes. Children of the Bhangis, irrespective of their religious faith, inherit the same occupation. The social disabilities are common to all the Bhangis. There cannot be dignity of labour and occupational equality until the higher and the superior castes also contribute their people to the occupation of scavenging and street sweeping. The Christian and Muslim sections who are scavengers and sweepers should be included in the list of Scheduled Castes.

1. **(Mrs.) Octavia Albuquerque,** M.L.C., President Council of Catholic Women, President, Lady Social Service League, Mangalore.
2. **(Fr.) Staney Miranda,** B.Sc., (Ph.D., Gregorian University, Rome. Principal, Theological College, Mangalore.

Although the Constitution has not defined as to who should be included in the list of Scheduled Castes under Art. 341, the Union Government, and later the Parliament, have discriminated against the non-Hindu groups. The list under Art. 341 contains only the Hindu castes. The policy of the Union Government in extending the benefits to only Hindu castes is discriminatory against non-Hindu groups.

Christians, being a religious minority, are not vocal and their grievances have not received proper attention by those who have been in power. Though the Christian religion does not recognise the division of its community into graded groups, as has been the case with the Hindu community, the impact of Hinduism on Christianity is such that the casteless Christians have adopted a system by which groups amongst Christian community have graded statuses. Hindu converts to Christianity have retained their original identity by following their old customs.

In Karnataka there are the Brahmin, Kshatriya, Shudra and Paraiah Christians. In the matter of matrimonial alliance the Brahmin Christians find the other spouse from the same community; so too the Harijan converts.

The Harijan converts to Christianity are following their old inferior occupations. They live in segregated places. All Christians

go in the official records as Indian Christians; they do not go as Brahmin Christians or Harijan Christians.

MUSLIM

1. **B. M. Abu Bakar,** M.A. (Hons.), Retd., Chairman of the Mysore Revenue Appellate Tribunal, Ex-Commissioner of Labour, and Ex-Divisional Commissioner, Government of Mysore, Ex-Commissioner of Municipal Corporation, City of Bangalore, Ex-Secretary to Government, Industries and Commerce Department, Ex-Director of Industries, Ex-Director of State Government Undertakings and Public Undertakings, State Finance Corporation, Bangalore, Ex-Chairman, Mysore State Board of Wakfs. Presently Director-Advisor of Hunsur Plywood Works, Chairman of the Governing Council, Hasanath Womens' College, Vice-President, Karnataka Federation of Minorities and Backward Classes. 2. **Col. A. R. Bijali,** B.A., President, Central Muslim Association, Bangalore. 3. **Alhaj Mohammed Ismail Shariff,** B.A., Retd. Labour Commissioner, Bangalore. 4. **Shaik Muslay Huddin,** B.Sc., Convenor, Central Muslim Association, Bangalore. 5. **M. Nazir Ahmed,** B.A., Vice-President, Central Muslim Association, Bangalore, 6. **M. Musley Huddin,** B.A., Assistant Secretary. 7. **Abdul Rahman Khan,** Member, Central Muslim Association. 8. **S. A. Bashid Baig,** Member and 9. **Syed Bashir Ahmed,** General Secretary, Central Muslim Association, Bangalore.

In the former State of Mysore, Muslim community was treated as a backward class. Because of the practice of *Purdha,* Government encouraged education of Muslim women. With the encouragement given by the Government, it started separate educational institutions in large numbers. The mother-tongue of the Muslims in Karnataka being Urdu, and Muslims being a religious and linguistic minority, the community was accorded special treatment in the matter of education and Government services. The Government gave the Muslims their due share in all fields like industry, agriculture, and commerce, and by reserving seats in educational institutions, including Technical Institutions proportionate to their population. In the political field, besides Municipal Councils, Corporations and other Local Bodies, Muslims were given separate electorate, and seats in the State Legislatures and the Parliament were reserved for them.

After we gained Independence in 1947, Muslims started receiving a set-back in all fields. Hindus started entertaining a feeling that Muslims had no patriotic and national feelings. This feeling has resulted in the discrimination of Muslims in a subtle form in all fields. A sort of distrust has developed between the two communities by which Muslims, being a majority community, are relegated to the position of second-rate citizens in the country. After the framing of the Constitution in 1950, Muslims have been deprived of

the special privileges that were extented to them before. The conditions obtaining in India do not help the minorities and the backward classes to exercise the rights given to them by the Constitution freely, without fear and in full measure.

In these days a community or a section cannot get its rights ventilated without having adequate and effective representation on the legislatures and other democratic bodies. Muslims have no voice in the politics of the country and in the administration of the Government, though they are no less patriotic than others. The representation of Muslims in Government services and in the fields of education, commerce and industry is decreasing. The system of education and the method of selection to Government services are not at all helpful to the Muslims and the backward classes. The vague and indefinite conception of merit is being misused to the disadvantage of the Muslims and the backward classes. Dubious methods are introduced in selection in the name of merit.

Muslims have no social privileges or disabilities amongst themselves.

Muslims are a homogeneous group without any divisions. There are no separate Mosques and no separate Idgas. Marriage rites and funeral rites are the same for all. Muslims do not have any traditional occupations. They are following all sorts of occuptions. No occupation is considered either low or high. There are no hereditary occupations. A butcher by profession has the same religious and social rights as a priest has in Muslim community. The daughter of a priest can marry the son of a scavenger without any inhibition, and both of them shall have the same status. Muslim community is a perfect society which has accorded similar rights to one and all. The touch or a sight of even a scavenger is not considered by Muslims as polluting. A scavenger or a sweeper can act as a priest in the marriages, the only qualification being that he should have studied the Koran and known the procedural aspect.

Reservation for backward classes, including Scheduled Castes and Scheduled Tribes, could be more than 50 per cent. The practice that was in vogue in the matter of reserving certain quota of seats in educational institutions or posts in Government service in favour of castes and communities on the basis of their population should be re-introduced. The seats or posts secured by backward class candidates in the merit pool should not be counted against the reserved quota. The unfilled seats or posts in the reserved quota should be made over to the other backward categories and they should not be allowed to go to the general pool. Judicial pronouncements on these aspects are incorrect. The Commission is requested to make a recommendation to the Union Government for amendment of the Constitution. The criteria suggested by the Commission

in its Questionnaire for determination of the backward classes are all relevant and important. However, the Muslim community adds the following criterion :

> Their being denied, as a class, equal opportunity in the developmental activities and prosperity of the Nation and in public service etc., as a result of discrimination against them, both by the public and Governmental authorities on grounds of religious bias and unfounded political suspicions, resulting in their backwardness—educational, social and economical.

The said additional criterion should be applied only in so far as the Muslims are concerned.

(To a question by the Chairman about the inconsistency between the evidence and the Memorandum submitted by the Association, the explanation given by them is as under :)

> Although there is no caste system as such in the Muslim social order, unfortunately, the community was divided and stratified into hereditary, professional and functional groups, following professions which are most unremunerative and uneconomic, which has relegated them to lowest strata of society of the State, economically and educationally.

The conventional idea of high and low peculiar to Hindu society is unknown to Muslim society. The groups amongst the Muslims could be readily identified by their occupations or professions. The opinion of some members of the Mysore Backward Classes Committee (1961), that only a few sections amongst the Muslims should be considered as socially backward, is not correct.

The opinion of the Backward Classes Commission, appointed by the President of India under Article 340, that Muslims had recognised caste, is incorrect. Further its opinion that Sheik, Syed, Moghal and Pathan are the upper castes amongst Muslims, is not correct.

Every Muslim, irrespective of his origin, occupation or profession or standing in society, goes as a Muslim in all the official records. Representations have been sent to the Central Government to provide adequate representation to the Muslims in the Central Services and to amend the Constitution suitably and also to treat Muslims as a backward class under Article 16(4). However, Muslims have not prevailed upon the Central Government to appoint a Commission.

> *Question by Chairman* : Have you gone through the Debates in the Constituent Assembly when Article 16(4) came to be discussed, and finally incorporated in the Constitution ?

Answer : Yes. We remember how the discussions took place, and unfortunately the attitude the Muslim representatives took at that time was disheartening and the Muslim representatives relied upon the good sense of the majority community in not insisting upon the reservation to Muslims in services, though we remember aright that such reservation was intended by the Constituent Assembly when it prepared the Draft Constitution. The attitude of the Muslim representatives on the Constituent Assembly could be attributed to the political upheavels that just preceded the formation of the Constituent Assembly. The Indian Muslims who were left with no effective leadership in India and those who were on the Constituent Assembly were afraid of asserting their rights.

Muslims being a religious and linguistic minority have established a number of educational institutions at all levels and they are being maintained by the Muslims and are getting the State aid. There are some Muslim Hostels but they are not aided by the Government. Through the Wakf Board some measures are being taken for the social and cultural advancement of the Muslims. There are Urdu medium schools as also the English medium High Schools and Colleges aided by the Government. Besides, Government also has started Primary Schools for linguistic minorities like Muslims.

Witness volunteers : In our reply to the Qquestionnarie we inadvertently omitted to make a mention about the backwardness of Denotified, Nomadic and Semi-Nomadic Tribes. Those Tribes are very backward, and they are akin to Scheduled Castes and Scheduled Tribes. They should be treated separately and liberal help should be extended to them.

Muhammed Kamal, B.A., B.L., Chairman, Wakf Committee, General Secretary, District Congress Committee, South Kanara, Mangalore and Member, Mysore Pradesh Congress Committee.

Mapillas are petty merchants and Beedi rollers to be found mostly in the coastal area. In the official records this community goes as " Mapilla or Muslim ". The population of Mapillas is somewhere between 15 and 20 thousand. There are six Advocates in Mangalore Town, but there are some more in the moffusil areas. There are two Engineers and one Doctor. There are about 30.35 Graduates. Imposition of social disabilities is absent in the Muslim community.

LINGAYAT

G. C. Shettar, Chartered Accountant, Hangal, Dharwar District.

Lingayats are a community consisting of a number of sub-castes such as Kshowrad (barber), Madiwala (washermen), Kumbara (potter), Ganiga (oil-presser), Gowliga (cowherd), Simpi (tailor), Jangama (priest) etc. All sections of Lingayats are not backward, but only some. Caste system cannot be reformed, but deserves to be uprooted.

The present educational system should be changed. For the spread of education audio-visual system should be introduced. Every educational institution should have sufficient number of radio sets. Persons of the upper communities should, as far as possible, be excluded from the teaching profession. The expression 'Backward Classes' means castes, sub-castes or sections of a community. Though Lingayats have different sections, by and large, they do not go by their sectional names but by a common name as either 'Lingayat' or 'Veerashaiva'. A separate and independent Commission should be appointed to take census of different sections amongst Lingayats.

The Denotified and Nomadic Tribes are extremely backward in all respects and they should be categorised separately. If those sections are put together with other castes or communities in the specification of backward classes, the benefits would be devoured by the stronger castes to the exclusion of De-notified Tribes and the Nomadic Tribes. If the backward sections amongst Lingayats cannot be identified for want of adequate materials, like their population figures, educational level etc., the entire Lingayat community should be treated as backward. About 80 per cent of the population in Karnataka, including Scheduled Castes and Scheduled Tribes, is backward both socially and educationally. 60 per cent of the seats in educational institutions and 60 per cent of the posts in Government services, in addition to 18 per cent in favour of Scheduled Castes and Scheduled Tribes, should be provided for the backward classes. Reservation to backward classes should be made on the Councils of Municipalities, Local Boards and Panchayats as is done in the case of Scheduled Castes and Scheduled Tribes.

Prohibition should be re-introduced in the State preventing illicit distillation and smuggling of illicit liquor. Liquor has evil effect on weaker sections. By and large those who are assessed to income tax belong to the Vaisya, Lingayat, Brahmin, Muslim and Jain communities. Those communities are generally engaged in trade and business.

Dr. V. V. Teggimani, Ex-Mayor, and Ex-Chairman, Karnataka Liberal Education Society, Medical Practitioner, Hubli.

In the former Bombay Province, the Lingayats or the Veerashaivas were treated by the Government as a Backward Class, and

on that ground Lingayats got benefit of admissions to educational institutions and other economic benefits.

The Hindu converts to Christianity should not be treated as a backward class ; however, Harijan converts to Buddhism should be treated as backward classes.

Lingayats, by and large, are living in rural parts and they are as backward as are the Harijans.

The Karnataka Liberal (Lingayat) Education Society was founded in 1916.

"I started 9 Colleges, including a Medical College. I raised contributions to the tune of 2 crores for the society. K.L.E. Society was originally founded by Lingayats. After 1947 it assumed a secular character. 29 educational institutions are being run by the K.L.E. Society, out of which 14 are Colleges and the remaining institutions are High Schools.....".

Although Veerashaivas rebelled against Hindu religion, for all practical purposes they are treated as Hindus. They do not follow the principle of caste i.e. the principle of high and low amongst their groups. The groups amongst Lingayats have different names, but they go only as Lingayats or Veerashaivas in the official records. The omission to mention caste particulars in Census Reports has harmed the interest of some of the Hindu castes, and so until castes are totally abolished they should be enumerated in the Census Reports. The Census authorities have considered Lingayats as Hindus and their population included amongst the Hindus. Lingayats are agriculturists by profession, but there are barbers, washermen and weavers and artisans who constitute independent and distinct groups. Lingayats consider barbers and washermen as inferior sections. Lingayats are treated as Shudras, though Lingayats as such do not suffer from any disabilities. There are no inter-caste marriages amongst Lingayats, but of late good number of inter-caste marriages are taking place. Besides the population of Scheduled Castes and Scheduled Tribes, a minimum of 45 per cent of the State population deserves to be treated as backward. The rule to assess the educational attainment of a caste or a community should be S.S.L.C. In the preparation of the list of backward classes care should be taken to categorise the extremely backward castes separately, so that separate treatment be accorded to them. Good number of Hostels should be opened by the Government to all the students belonging to the backward castes. However, certain percentage of seats in the hostels should be reserved for advanced communities also. Education, even at the University level, should be free. Students with brilliance amongst the backward classes should be provided with special facilities. A separate Backward Classes Board should be constituted.

The Denotified and Nomadic Tribes like the Lamanis and Voddars cannot get elected to Local Bodies like the Panchayats, Municipal Councils and Taluk Development Boards. Hence reservation should be made for them on those Bodies. Each backward caste or community should have reservation in educational institutions and government services, not just proportionate to its population but double the ratio. Five years age relaxation for backward classes for entry into government service should be recommended. Lingayats seem to be contented with the little of what they get in the State services and their leaders have not made any efforts to secure reservation in Central services.

Lingayats have produced large number of lawyers, judges and administrators as also successive Chief Ministers, other Ministers and Vice-Chancellors of Universities. There are Associations, Hostels for students, and Banks and Co-operative Societies where membership is confined only to Lingayats.

If Lingayats were not treated as a backward class in the past, their advancement would have been much less than what it is today.

The condition of the Denotified and Nomadic Tribes is very pitiable and they are far more backward than the Scheduled Castes and the Scheduled Tribes. They deserve to be categorised separately. The Nagarthas and Devangas, who wear Lingam, are Lingayats. So far as Bombay Karnataka and Hyderabad Karnataka areas are concerned, the wearing of Lingam by all castes is a universal feature.

Dr. V. K. Jawali, B.A. (Hons.), B.T., Diploma in Physical Education, M.E. (Bombay), Doctor of Philosophy (Bombay), M.A. (Columbia, New York), Retired Joint Director of Public Instruction, Bangalore.

(Note: Dr. V. K. Jawali wanted his evidence to be recorded in the way in which he deposed. That liberty was given to him. However, in this summary of his evidence the Commission has excluded certain matters which the Commission considered not relevant).

Lingayats cannot be considered as Hindus. Lingayats living in rural areas are backward. In the determination of backward classes one cannot go by the principle of caste. In the former State of Bombay, Lingayats were treated as an Intermediate Class and appointments in Government Departments were reserved for them.

1. **G. Sambasivaiah,** B.A., (Mysore), Graduate of Tech. (Manchester), Retired Chief Engineer (Electrical) and Ex-Chairman, Mysore State Electricity oBard, Bangalore.

2. **H. Puttaswamy,** B.E., Retired Executive Engineer, Bangalore.

The Mysore Backward Classes Committee (constituted under the Chairmanship of Dr. R. Nagana Gowda) did not properly ascertain the population of Lingayats and so the Lingayat comunity came to be excluded from the list of backward classes. Indeed, population figures relating to other communities also were incorrect. According to the Report of the States Reorganisation Commission the population of Lingayats was stated to be over 20 per cent. The percentage of Lingayats living in rural areas was about 90 per cent and it is a well known fact that communities residing in rural areas are socially, economically and educationally backward. Lingayats, besides other castes, were treated as a backward class and so they were getting scholarships, free studentships, reservation in educational institutions and Government services. Lingayats came up in their own right and produced judges, engineers, doctors etc. But, the number of judges, engineers, doctors etc. is very small in relation to their population. After the reorganisation of the State the percentage of Lingayat officers in Government services is considerably reduced. There are different sections amongst Lingayats who go by different names, but in the official records Lingayats do not go by the names of their sections. They go either as Lingayats or Veerashaivas. Even so, the sectional feelings amongst Lingayats are fast disappearing on account of inter-caste marriages. Lingayats are discriminated against by the Brahmins in religious and social matters. At the time of Mahatma Basaveswara people belonging to all castes including the Brahmins embraced Veerashaivism and the old beliefs, traditions and customs are to be found, to some extent, amongst them even to-day. Veerashaivas are Hindus, but they protested against only the Hindu caste system. The 1963 Government Order classifying individuals as backward on the ground of income and occupation has not helped the really backward classes, and the advantage under the said scheme has been taken away by the alert and intelligent classes.

S. D. Kothavale, B.A., (Hons.), LL.B., Ex-M.L.A., Ex-Member, Mysore Public Service Commission, Ex-Speaker, Mysore Legislative Assembly, Advocate, Bangalore.

For determination of backward classes the backwardness should not be comparable to that of the Scheduled Castes and Scheduled Tribes. The ruling of the Supreme Court in Balaji case is incorrect. Anglo-Indian community cannot come within the meaning of the expression Backward Classes. By Article 338(3) of the Constitution, Backward Classes have got to be specified by caste and comunity names, but that does not mean that the extent of backwardness should be comparable with that of the Scheduled Castes and Scheduled Tribes.

Reservation to backward classes should be proportionate to their population. Backwardness of an individual or of a family cannot be taken to determine the backward classes.

The following criteria should be adopted for the determination of social backwardness: (a) low or inferior status of the caste or community; (b) its traditional ocupation, which has been considered to be inferior in the conventional sense; (c) its poverty, traditional apathy for education; (d) inadequate representation in Government services; (e) its habitation in rural and backward areas. And (f) Shudras, provided they fulfil the above conditions.

Literacy cannot be taken as a level for the determination of educational backwardness. P.U.C. (First Year) is the proper level. Backward Classes should be separately divided into different categories as was done by the Nagana Gowda Committee. The absence of caste enumeration in the Census Reports has created difficulties for implementing the provisions of Article 15(4) and 16(4). Caste particulars should be recorded at the Census. In the absence of caste particulars, after 1941, recourse should be had to the previous Census Reports, and the population figures of castes inflated.

In the New State of Karnataka the population of Lingayats exceeds 20 per cent. The Nagana Gowda Committee (1961) underestimated the population of Lingayat community. The bulk of the Lingayat community resides in villages. Lingayats personally cultivate lands of small holdings. They are agricultural labourers, petty traders and some others following occupations which involve manual labour. All those occupations are traditionally inferior. They are treated on par with Shudras in the Hindu social hierarchy. Besides Lingayats, Vokkaligas are also a backward community. The Commission appointed by the President of India under Article 340 had opined that Lingayats and Vokkaligas residing in rural areas were backward. Besides Scheduled Castes and Scheduled Tribes population, about 50 or 60 per cent of the population could be treated as Other Backward Classes.

Lingayats are part and parcel of the Hindu community, but they protested against the caste hierarchy. However, Lingayats do not come within the four-fold division of the Hindu society. They do not believe in the principle of caste i.e., in the principle of high and low on the ground of birth. Lingayats have various sections. Marriages amongst castes are taking place. Veerashaivas are, in particular, not Shudras amongst the Hindus, but the Hindu upper-castes are treating Veerashaivas as Shudras. Though Veerashaivas do not consider any occupation as inferior or superior, manual labour is considered to be inferior. Though manual labour is not employed by the barbers, they too are considered to be inferior.

The opinion of Sri M. S. Patil, Member, Mysore Backward Classes Committee, in his dissenting Note that Lingayat sections of Banajigas, Jangamas, Settaru and Aradhyas are not backward, cannot be accepted. All the sections of Lingayats go either as Veerashaivas or Lingayats.

The living conditions of the Denotified and Nomadic Tribes are very primitive in nature. Some of them are more backward than the most backward Scheduled Castes and Scheduled Tribes. In the former State of Bombay, Lingayats were treated as an Intermediate Class, below the advanced class. In the Old Mysore State they were treated as a backward class.

NAGARTHA (Vaishnava):

1. **B. L. Chikkaram,** Assistant Post-Master, Postal Department, Bangalore. 2. **G. Shamanna,** Assistant Controller, State Accounts Department, Bangalore. 3. **H. Puttanna,** P.A. to Industries Minister, Bangalore. 4. **S. C. Muniyappa,** Cloth Merchant, Bangalore. 5. **G. Ramakrishnappa,** Retired District Social Welfare Officer, Bangalore. 6. **B. Ranganatha,** B.E., Hindustan Aeronautics Ltd., Bangalore. 7. **T. M. Rangappa Chetty,** Bangalore. 8. **C. Thyagaraj,** Anekal.

The Census authorities have included the two sections of Nagarthas, viz., Vaishnava Nagarthas and Shaiva Nagarthas under the heading " Nagartha ". Indeed, they are two separate sections. There are no inter-caste marriages. The Shaiva Nagarthas are far more advanced than the Vaishnava Nagarthas. The traditional occupations of Nagarthas of both the sections are agriculture and trade. The Mysore Backward Classes Committee (1961) clubbed the population of both Namadhari (Vaishnava) and Lingadhari (Shaiva) population together. The Vaishnava section should be separated.

NAGARTHA (Shaiva):

1. **K. Chandrasekara,** Secretary Ayodyanagarada Shivacharya Vaishya Nagartha Sangha, Bangalore. 2. **T. Madaiah,** Retired Tahsildar, Bnagalore. 3. **A. Maligappa,** Retired Manager, Department of Mines and Geology, Bangalore. 4. **A. Nanjanna,** Agriculturist, Hoskote Taluk, aBngalore District.

" Ayodyanagarada Shivacharada Vaishya Nagartha " is a section whose traditional occupation is petty trade. The economic condition of the said section is bad. A caste could be considered to be educationally advanced if 60 per cent of its population is Matriculation or S. S. L. C. passed. The population of Shaiva Nagarthas in 1971 was about 16,000. A community could be treated educationally advanced if 10,000 out of 16,000 are S.S.L.C. passed.

It is socially backward because it has no sufficient number of representatives in the Municipalities, Taluk Development Boards, Legislatures and other Bodies. It is socially backward because there

is not even one I.A.S. and I.P.S. officer belonging to the said caste. There is no Cabinet Minister belonging to the said caste, nor even a Legislator.

The Shivacharya Nagarthas wear Lingam and the Namdhari or Vaishnava Nagarthas wear cross-thread. Some wear both Lingam and cross-thread. Nagarthas occupy their rank along with the Vaishyas in the traditional hierarchy. The Shaiva Nagarthas invite both Veerashaiva Jangamas and Brahmins to render religious service. Of late, the Nagarthas have gone as Lingayats or Veerashaivas in the official records. It has its own hostels for students. Their Association grants scholarships. There is relationship between this section and the other sections of the Lingayats, excepting the Aradhyas. There is no difference between the Namdhari Nagarthas and Lingadhari Nagarthas. The only difference is that Namdhari Nagarthas wear cross-thread and the Lingayat Nagarthas wear Lingam. Both the sections worship the same deity viz., 'Nagareshwara'. Both the sections are vegetarians. Namdhari Nagarthas could become Lingayat Nagarthas by just wearing Lingam.

SHUDDHASHIVA SHIVARCHAKA-THAMMUDI :

1. **D. S. Devaraja Murthy,** Principal J.S.S. Training College, Mysore. 2. **M. S. Dakshinamurthy.**

The population of this caste is about 10,000. Their occupation is performing Pooja in Shiva Temples, which are about 2,000 in number. There are more than 250 S.S.L.C. passed and about 20 graduates. There are 200 employees in various departments of the Government. Though the Government has included this community amongst Lingayats, in fact, it does not belong to Lingayat community. Every family of this section is attached to a Shiva temple.

AGASA :

P. V. Raichur B.A., (Hons.) LL.B., Advocate, Line Bazaar, Dharwar.

Agasas occupy a low position on account of their unclean traditional occupation. Wasing the unclean cloths of others is its traditional occupation. It is very unremunerative. It is culturally and socially backward. Some of the Agasas have embraced Veerashivism.

ARASU (Urs):

1. **M. Basavaraj Urs,** President, Ursu Mandali Sangha, Mysore, Retd. Superintending Engineer. 2. **Sadar Rajasevadhureena, M. L. Raje Urs,** Member and Ex-President, Ursu Mandali Sangha, Mysore and Advocate. 3. **M. Mallaraj Urs,** Member Ursu Mandali Seva

Sangha, Mysore, Retd. Director of Agricultural, Bangalore. 4. **A. Basavaraj Urs,** Hon. Secretary, Ursu Mandali Seva Sangha, Mysore, Lieutenant in Palace Forces. 5. **P. S. Siddharaj Urs,** Member, Ursu Mandali Seva Sangha, Mysore, Retd. Inspector of Police. 6. **A Veeraraj Urs,** Member, Ursu Mandali Seva Sangha, Mysore, Retd. Deputy Superintendent of Police.

Arasus are a section of Kshatriyas. Arasus trace their ancestry to the Mysore dynasty. Presently, the occupation of Arasus is agriculture and their land holding is very meagre. They are to be found only in the districts of Mysore, Bangalore and Hassan.

The Nagan Gowda Committee had wrongly included Arasus with Rajaputs. In the social scale of honour, Arasus occupy a place below Brahmins, viz., the place of Kshatriyas.

BALIJA :

1. **B. S. Narayan,** B.Sc. (Hons.), Member, Balija Sangha, Bangalore, Retd. Deputy Commissioner. 2. **S. G. A. Naidu,** Mine Owner, No. 34, Sirsi Road, Chamarajpet, .Bangalore-18. 3. **N. Venkatachalaiah,** Grain Merchant, No. 7, Siddagangamutt Road, Chamarajpet, Bangalore-18.

The population of Balijas is about 12 lakhs in the State. The Nagana Gowda Committee have arbitrarily omitted population figures of certain castes and communities and those figures were not based on Census Reports. The Census authorities seem to have included some of the Balijas amongst Lingayats and Vokkaligas. They have the following synonymous names : Naidu, Bale Banajiga and Telugu Banajiga. The traditional occupation of the caste is trade. They are petty traders engaged in selling beedi leaves, cotton, bangles, flowers, beads etc. They are agriculturists and agricultural labourers as well. They are to be found mostly in the districts of Bangalore, Tumkur, Mandya, Hassan, Shimoga, Mysore and Chitradurga. The community does not suffer from social disabilities, but they are economically poor. The occupations in which they are engaged are not considered low in the conventional sense.

BANJARA (Lamani):

1. **Tejsingh Rathod,** President, Karnataka Predesh Banjara Seva Sangha, Bangalore-6, Ex-Member, Mysore State Tribal Advisory Council, Ex-Member, Legislative Council. 2. **L. R. Naik,** B.A., LL.B., Retd. Deputy Commissioner, Government of Mysore. Convenor, Backward Classes Cell, K.P.C.C. (R), Bangalore. 3. **S. Thippa Naik,** M.E., President, Banjara Yuvaka Sangha, Bangalore.

Banjaras or Lamanis have their own culture, and language with no script. They live in jungles and barren hills. Their mode of living, style of dress and culture are distinct.

In the old Mysore area they have been specified as a caste under Article 341 of the Constitution. In the Bombay and Hyderabad Karnataka areas they have been treated as Ex-Criminal Tribes. They are inarticulate. They do not own lands or houses. They are engaged in agricultural labour and other unspecified manual service. They are living in isolated areas remote from centres of educational facilities. Literacy among Lamanis is almost nil. In different States they have been treated either as Scheduled Caste or as Scheduled Tribe. They have no representation in Village Panchayats, Taluk Development Boards and Municipalities, much less in Legislatures.

The synonymous names of Lamanis are: Banjara, Lambada, Vanjara, Vanjari, Sugali etc.

BILLAVA:

1. **B. P. Ramanna,** Gonikoppal, South Coorg. 2. **Narayan Rao Kalle,** Karkala, Ex-Assistant Editor of the Kannada Daily, "Samyukta Karnataka", Ex-Editor of Weekly Magazine "Janapada".

There are two sections of Billavas based on language. The spoken language of one section is Tulu and that of the other is Malayali. Of late, there have been inter-marriages. Originally, Billavas were a warrior class. After the advent of the British they have taken to various occupations like watching and protecting the boundaries of the village and menial services. They are also called Olekars and Nayaks. The surnames of some of the families are Bontras, indicating Betegars.

B. Koragappa, B.A., B.L., Retd. District and Sessions Judge, Mangalore, Member of Mysore Backward Classes Committee, 1961.

The Reports of Mysore Backward Classes Committee (1961) (headed by Dr. Nagana Gowda), both Interim and Final, were drafted by its Secretary. At the time when figures relating to the educational attainment of different castes and communities were called for, the Director of Public Instruction had omitted to include the student population relating to the Aradhya or Jangama communiy in the Lingayat community. But, student population of Aradhya community was added to the other sections of Lingayats and so their percentage went a little above State average. This fact was known to the other Member of the Committee, Sri M. S. Patil, and inspite of it, he wrote a dissenting Note.

The Nagana Gowda Committee excluded Bhunts from Vokkaliga community. Bhunts of South Kanara district are advanced in all respects. In the field of education, they have made tremendous progress from about 1920. But, Vokkaligas of old Mysore had not made advancement. By claiming as a section of Vokkaligas, perhaps, Bhunts thought that when the Vokkaliga community of old Mysore State was to be treated as backward, they too would get the benefits. There are no official records showing that Bhunts were ever considered as a section of Vokkaligas. Bhunts, who are to be found only in Mangalore district and in some parts of Madras, were never considered to be backward by the Madras Government.

The Mysore Backward Classes Committee (headed by Dr. Nagana Gowda) was divided in its opinion about the backwardness of Muslim community. It could be inferred that the Government subsequently nominated one Mr. Sheriff on the Committee to secure majority support in favour of Muslims.

The members of the Nagana Gowda Committee were indifferent to the provisions of the Constitution relating to backward classes and the rulings of the judiciary.

Tulu and Malayali Billavas constitute one community, though there are some slight differences. There are inter-caste marriages, though few in number.

The Nagan Gowda Comimttee divided the backward classes as 'backward' and 'more backward' since the Committee apprehended that the major communities amongst the backward classes would devour all the benefits to the exclusion of the smaller and weaker sections. While determining the social backwardness of a caste or community, the Committee went on the sole basis of the principle of caste.

BESTAR (Bunda Besta)

1. **H. S. Siddalingappa,** B.A., LL.B., President, Akhila Karnataka Bestar (Bunda Besta) Sangha, Old Town, Bhadravathi Shimoga District. 2. **Smt. Kamala Giriyappa,** Treasurer, Akhila Karnataka Bestar ((Bunde Besta) Sangha, Bangalore, 3. **H. M. Munivenkataramana,** Advocate, Bangalore, 4. **K. Mallaiah,** Retd. Government Servant, Member, Akhila Karnataka Bestar (Bunde Besta) Sangha, Bangalore. 5. **A. Narasimhamurthy,** Member of Akhila Karnataka Bestar (Bunde Besta) Sangha, Bangalore. 6. **H. Channaiah,** Member, Akhila Karnataka Bestar (Bunde Besta) Sangha, Mandya. 7. **C. D. Ganganna, son of Doddaiah,** Director, Akhila Karnataka Bestar (Bunde Besta) Sangha, Bhadravathi, Superintendent, Mysore Iron and Steel Limited, Bhadravathi.

The traditional occupation of the caste is fishing and some are palanquin bearers. (**Note.**—The enumerators guide published by the Census Department in December 1940 does not contain Bunda Besta (Bestar) as a sub-caste of Gangamatha). The Kalelkar Commission also has shown Bunde Bestar separately from Besta, and it is shown that the traditional occupation of Bunde Bestar is begging. In the 1931 Old Mysore Government Order declaring Besta as synonymous with Gangakula, Bunde Bestar is not shown to be a synonym for Gangakula. Bunde Bestar is not shown either in the Debhar Committee Report, Kalelkar Commission Report, Lokur Committee Report, Nagana Gowda Committee Report or any Government Order as being synonymous with Gangakula. The State Social Welfare Department also is not recognising Bunde Bestar as synonymous for Gangakula.

CHARODI :

1. **S. G. Seetharamaiah,** Krishna-Krupa, New B. H. Road, Sagar, Shimoga District. 2...**M. Balakrishna Naik,** Mangalore. 3. **H. K. Mesta,** Udupi. 4. **S. S. Honnappa Achar,** Sirur, Kundapur, South Kanara. 5. **Damodar Mestha,** Honnavar, North Kanara. 6. **K. Gangappachar,** Holenarasipur, Shimoga District 7. **K. Manjunath,** Sagar.

The population of Charodis is 15,000. Its synonymous names are Konkani Achari and Mesta. The traditional occupation is carpentry. They are different from Viswakarmas. They are socially, educationally and economically backward. They do not have representation in services. They are Shaivaites.

CHEPTEKAR :

K. Prabakara Nayak, Secretary, South Kanara District Cheptekar Samaja Sudharaka Sangha, Mangalore.

The traditional occupation of Cheptekars is carpentry. They are to be found only in the district of South Kanara with a population of about three thousand. Majority of them are living in rural areas and they are socially and educationally backward.

CHATADA SRIVAISHNAVA (Satani) :

1. **Dr. B. K. Krishnaiah,** Executive Committee Member, Mysore State Chatada Srivaishnava Association (Satani), Bangalore, Corporator of Bangalore. 2. **K. N. Muthuraju,** Assistant Manager, Food Corporation of India, Bangalore. 3. **K. A. Rajagopal,** Retd. Revenue Inspector, Mysore Taluk. 4. **R. Srinivasan,** N. T. Pet, Bangalore. 5. **C. R. Chalapathy,** Assistant Director of Industries and Commerce, Bangalore. 6. **T. J. Ramakrishna,** Joint Registrar of Co-operative Societies, Bangalore. 7. **C. R. Sampathkumaran,**

Chikkaballapur. 8. **R. Padmanabhan,** Accounts Officer, Karnataka State Electricity Board, Tumkur.

The population of Satanis or Srivaishnavas might be a little more than one lakh. Census Reports relating to Dharwar, Belgaum, Bijapur, Karwar, Gulbarga, Raichur and South Kanara do not make a mention about the existence or otherwise of Satani caste in those districts. The traditional occupation of Satanis is rendering religious service in Vaishnava temples. The Census authorities seem to have included Satanis amongst Brahmins. It is also possible that Satanis themselves might have given their caste as Brahmin.

The population of Satanis in 1971 might be about 61,000. Satanis are employed as Archaks in minor Muzrai temples. They wear cross-thread and apply Namam on their forehead as do the Brahmins. The origin of Satanis could be ascribed to the fact that low-caste people were not permitted entry into temples by the Brahmins, and so, to serve the religious needs of those lower castes Satanis might have emerged as a class of people for rendering religious services to the lower classes. In course of time Satanis seem to have stratified into a caste occupying a superior position amongst the Shudras.

Satanis are low in the estimation of Brahmin priests and Lingayat Aradhyas. Satanis do not suffer from any social disabilities.

DARZI (Bhavasara Kshatriya)

1. **Prabhakar R. Telkar,** M.L.A., Gulbarga. 2. **Krupashankar N. Zhingade,** President, Akhila Karnataka Bhavasara Kshatriya Samaj, Bangalore. 3. **L. N. Pissay,** Secretary, Akhila Karnataka Bhavasara Kshatriya Samaj, Bangalore. 4. **L. V. Yellappa Rao,** Bangalore. 5. **R. L. Vasudeva Rao,** General Secretary, Mandya District Backward Classes Federation, Mandya. 6. **B. M. Krishna Rao,** Bangalore. 7. **B. A. Ramakrishnaji Rao.** Bangalore. 8. **M. Nanjunda Rao,** Bangalore. 9. **R. Suryanarayanaswamy,** Bangalore. 10. **S. K. Ramachandra, B.E.,** (Electrical) Principal, L. V. Polytechnic, Davangere. 11. **J. N. Rangadal,** President, Bhavasara Kshatriya Samaj, Gulbarga.

The synonymous names for Bhavasara Kshatriya are Darzi, Bhavasara, Rangari, Bahusar, Rangarez, Simpi, Bawsar, Rangere, Shimpi, Namdev, Rangarajulu, Chippi, Chippiga, Kshatriya. The traditional occupations of this community are tailoring, dyeing and printing on cloth. Their population is about 5 lakhs. The spoken language of Bhavasara Kshatriya community is Marathi and so the Census authorities seem to have mistaken Darzis for Marathas. Some of the Darzis have gone as Marathas in the Census Reports.

In the official records some Darzis have gone as Marathas. Namadeva Shimpi or Namadeva Kshatriya is a sub-caste of Darzis. The traditional occupation of Namdev Shimpi is similar to that of Bavasara Kshatriya. Some of the Darzis have gone as Kshatriyas as well.

DEVANGA:

1. **S. K. Lakshminarasimhaiah,** B. A., B. L. Advocate. Mysore, Chairman, Mysore State Handloom Advisory Board, Founder President of the Silk Weavers' Society, Founder President of the Mysore District Industrial Co-operative Bank, Mysore, Director of the former Mysore State Handloom Weavers' Co-operative Society, Director of the Mysore State Silk Handloom Central Co-operative Society, Vice-Chairman of the National Federation of Industrial Co-operatives, New Delhi. 2. **S. Sanjeevaiah, B.A.,B.Com.,B.L.,** Advocate, and former President of the City Municipality, Mysore.

The unit of specification of a backward class should be a caste or a sub-caste or a community. Backwardness should be determined on the basis of status of a caste in the hierarchy, inferior and un-remunerative character of the occupation, residence in rural areas, low economic income level and low standard of education. The population of 'other backward classes' could be about 50 per cent. In other words, besides the population of Scheduled Castes and Scheduled Tribes, about 50 per cent of the State population is backward. Reservation in educational institutions and Government services should be to the extent of 50 per cent in addition to 18 per cent for Scheduled Castes and Scheduled Tribes. To determine the educational attainment, the standard should be SSLC-pass. Castes and communities whose level of education is below State average should be treated as educationally backward. Castes and communities whose level of education is below 50 per cent of the State average should be considered as extremely backward and they should be categorised separately. The low status occupation followed by a caste aggravates the social backwardness. The judgment of the Supreme Court in Balaji case is not correct, in this, that the backward classes need not necessarily be comparable to Scheduled Castes and Scheduled Tribes in the matter of their backwardness. The following occupations are un-remunerative.

1. Sheep rearing, 2. Weaving of mats, 3. Wool weaving, 4. Toddy tapping, 5. Tanning, 6. Fishing, 7. Carpentry, 8. Smithy, 9. Potter, 10. Arts and Crafts, 11. Occupation of Barbers, 12. Occupation of Butchers, 13. Basket making, 14. Oil crushing, 15. Tailoring, 16. Rope making, etc.

GANGAKULA:

1. **S. C. Basappa,** PWD Contractor, President, Karnataka Gangamathasthara Sangha, Shimoga. 2. **D. T. Ramu,** Office bearer

of Karnataka State Gangamathasthara Sangha, Bangalore. 3. **K. N. Shivathirthan,** Office-bearer. 4. **H. P. Narasimhaiah,** Office-bearer Holenarasipur, 5. **M. D. Devappa,** Office-bearer, Hassan. 6. **G. R. Baindur,** Office-bearer, Bangalore. 7. **K. N. Devappa** and 8. **Nanjaiah,** Office-bearer, Holenarasipur. 9. **Thimmaiah,** Office-bearer, 10. **T. Venkatachalaiah,** Office-bearer, Bangalore.

The traditional occupation of the caste is fishing, but some of them are lime-burners and boat-rowers. Some of them are engaged in letting water to the lands from the tanks. Its synonymous names are Gangakula, Mogaveera, Ambiga, Kabbaliga, Gangaputhra, Gangathora, Thoreya etc.,

GOLLAR :

S. Siddappa, M.Com., B.L., Advocate, Bangalore, Secretary, Akhila Karnataka Gollara Sangha, Bangalore.

Traditional names of Gollars are Yadava and Gouli. They are a nomadic Tribe. Traditionally they are cowherds and some of them rear sheep also. They are socially, educationally and economically very poor.

HARIKANTHA :

R. S. Lakkumane, President of Karwar District (North Kanara) Meenagar Seva Samithi.

The fishermen community in the district of North Kanara goes by different names such as Harikantha, Gaabit, Ambiga, Kharvi, Mogaveera, Nathwaji, Boi etc. Each one of them is separate and distinct from the remaining sub-castes. Some sections are Muslims.

IDIGA :

1. **T. V. Venkataswamy,** M.L.C., Bangalore, General Secretary of the State Backward Classes and Minorities Federation, Ex-Secretary, Mysore State Arya Idiga Sangha. 2. **K. Doomappa,** Ex-M.L.C., Mangalore Ex-President, South Kanara District Billava Union. 3. **B. Gangadhar Das,** Advocate, Mangalore, Ex-President, S.K. District Billava Union, Ex-Vice Chairman, the Mangalore Municipality, Ex-District Board Member, Ex-Government Pleader, Ex-President, District Congress Committee (O), President, District Backward Classes Sangha. 4. **S. Chandrasekar,** Social Worker and Bus Operator, Mangalore-1. 5. **Dr. Damodhar Mulki,** M.L.A., Senate Member, Bangalore University, Convenor of the District Backward Classes Cell, Congress (R). 6. **Sanjeeva Suvarna,** Suratkal, President, Suratkal Block Congress Committee.

The synonymous names for Idigas are Tulu Billava, Malayali Billava, Divars, Namdhari. The traditional occupation of the

community is toddy tapping. Some are excise contractors, toddy vendors and some agricultural labourers. The occupation of toddy-tapping being considered low in the conventional sense, the Idigas are looked down upon by the society. They are not touched by the upper classes. They are not permitted entry into the temples. They are considered untouchables.

The population of Idigas is 15 lakhs. Economically they are extremely poor. Educationally they are backward. They live in thatched huts without any civic amenities. The living conditions are comparable to those of Harijans. There have been marriages between the different groups. Nagana Gowda Committee (1961) has underestimated its population.

1. **Kagodu Thimmappa,** M.L.A., Shimoga. 2. **E. Hanumanthaiah,** Secretary, Karnataka Arya Idiga Sangha, Bangalore. 3. **H. R. Ramadas,** Chitradurga. 4. **P. Hanumanthaiah,** Landlord, Tumkur. 5. **S. M. Ramahanumaiah,** Tumkur. 6. **Dase Gowda,** Mysore. 7. **T. V. Venkataswamy,** MLC.

There are some hostels meant for the students of Idiga community, where free food and lodging are provided. Besides, Idiga Association grants scholarships to about ten students per year of the value of Rs. 100 per annum. There are about 25 Excise Contractors and about five thousand toddy vendors. Some of the Contractors have taken to the privilege of vending arrack. The Kalals and Goundalas, included amongst the Idigas by the 1961 Backward Classes Committee, do not belong to Idiga community. Similarly, Indras and Shanans do not belong to Idiga community. Memorandum was not given before the Nagan Gowda Committee, because Mr. Koragappa of Idiga community was a member. Even after the Government issued the order on the basis of the recommendations made by the Nagana Gowda Committee, the Association did not give any representation to the Government to exclude Goundalas, Kalals, Indras and Shanans.

IREE:

A. M. Annaiah, President, Kodaga Iree community, Mercara.

'Irees' are traditional carpenters, and some of them are engaged in smithy. They are not to be found in any other part of the State, except Coorg. Their population cannot be ascertained.

KALAL:

1. **S. Raju,** Co-operative Extension Officer, Chitradurga, 2. **K. S. Ganesh Rao,** Junior Engineer, Tumkur, 3. **P. Ramji Rao,** Bangalore. 4. **K. Shivaji Rao,** Bangalore.

It is also called Suryavamsha Kshatriya. The population is fifty thousand. Its occupation is mutton selling. They are arrack sellers also. A certain section of Kalals has embraced Islam. Its mother-tongue is Hindi. The caste is considered to be inferior because of inferior occupation its members are following. Indeed, they are considered untouchables.

KANIYAR :

1. **K. S. Ramasanjeevaiah,** B.A., B.L., Member, Kaniyara Seva Samaj, Chamarajpet, Bangalore. 2. **K. Sannaiah,** Member. 3. **K. Madhavan,** Member. 4. **M. V. Venkataramanaiah,** Member. 5. **G. Narayanaswamy,** Member. 6. **R. Muthaiah,** Member. 7. **K. R. Gavirangaiah,** Member. 8. **R. S. Rangaswamy,** Secretary of the Sangh, Mysore. 9. **C. Shivamallaiah,** Vice-President of the Sangh. Bangalore. 10. **B. C. Rangappa,** President. 11. **M. Raju,** B.Com., President, Kaniyara Seva Samaj, Bangalore.

Kaniyar caste has a population of 60,000 to be found in the Districts of Bangalore, Mandya, Mysore and Hassan. The traditional occupation of Kaniyar is practice of astrology. They augment their income by practising medicine (Ayurvedic). In the hierarchy of castes they are not that low, but they are economically very backward.

KARUNEEKA (Mudaliar) :

1. **P. V. Ramakrishna,** B.Sc., Vice-President, Mysore Karuneeka Sangha, No. 10, Srirampuram, 1st Main Road, Bangalore-20. Retd. Under Secretary to Government of Karnataka. 2. **K. T. Adikeshavan,** Businessman, Vice-President. 3. **K. Chandrasekhar,** General Secretary. 4. **R. Nagaraj,** Joint Secretary. 5. **M. R. Nagarajan,** Vice-President.

The mother-tongue of Karuneeka caste is Tamil, but they are educated in Kannada. They have no traditional occupation as such, but they are engaged mostly in industrial establishments and petty trade.

In the official records Karuneekas have gone as Mudaliars and as Pillais. They are Shudras.

The caste Karuneeka does not find a mention in any of the treatises on castes and tribes or in the Census Reports. Karuneekas have been included amongst Mudaliars which is not correct. Even in the School Registers they go as ' Mudaliars '.

KEMBATTY :

1. **H. N. Kuttappa,** Secretary, Kembatty Association. Billagundu Village P.O., Coorg District. 2. **S. P. Appachu,** President, Kembatty Association, Bilagunda Village P.O., Coorg District.

The population of this community is about 5,000 to be found in Coorg District. They are untouchables, but not Holeyas. Government Officers have wrongly clubbed Kembatty caste with Holeya caste. The Kembatty caste should be specified in the list of Scheduled Castes separately.

KODAGU GOWDA :

1. **K. Ponnappa,** President, Kodaga Vidya Sangha, Mercara and Member, Taluk Development Board, Mercara. 2. **A. Madaiah,** Member, Taluk Development Board, Mercara.

Kodagu Gowdas are a section of Vokkaligas. There have been instances of blood relationship between other sections of Vokkaligas and Kodagu Gowdas. The Kodagu Gowdas are agriculturists, and own plantations and estates.

KODAVA :

B. D. Ganapathi, son of Devaiah, Journalist, Editor, " Kodagu " paper, Mercara.

The members of Kodava community do not suffer from any social disabilities. 10 per cent of Kodavas have an average income of Rs. 5,000 and above per annum, about 25 per cent of the people have an average income of Rs. 2,400 to Rs. 5,000 per annum and the remaining 65 per cent of the Kodava people have an income below Rs. 2,400 per annum. A sample survey was conducted for this purpose. The average of a family unit is 5. Kodava community people are not to be found outside the Coorg district, and in the district, they constitute about 29 per cent of the population. There are 450 co-operative societies in the district and the majority of the office-bearers like the Chairmen, Vice-Chairmen, Directors and Members of the executive committees belong to Kodava community. There are 108 Panchayat Committees in the district and they are headed mostly by the Kodava people. The younger people of the community are inherently inclined to join Military, Forest and Police services.

Rao Bahadur P. A. Chengappa, Mercara.

Kodava or Kodaga caste people are to be found in the district of Coorg. 80 per cent of the Kodava caste people are getting less than Rs. 2,000 income per year. Some are estate owners. They engage Harijans and tribesmen as labourers in their estates. Brahmins, Lingayats, Gowdas, Christians and Muslims are also estate owners and they too employ Harijan and tribesmen as labourers in their estates.

KODAVA (Amma Kodava):

1. **P. M. Poonacha,** President, Mercara Taluk Congress Committee and Member of the Coorg District Development Council, Mercara. 2. **G. M. Suresh,** B.A., LL.B., F.S.S.A. (India), Advocate, Virajpet.

Amma Kodava was traditionally a priestly class. Now they have taken to agriculture. They are considered low in the hierarchy of castes. Economically they are poor. The population of the community is about 6,000, and it is not to be found anywhere else.

KOMARPANTH:

M. R. Naik, B.Sc., (Hons), LL.B., President, Kumarapanth Samajonnati Sangha, Kodibagh, Karwar, North Kanara District.

The synonymous name for this community is Komarpaik. The people of this community are to be found only in the District of Karwar (North Kanara). The traditional occupations of this community are agricultural labour and toddy tapping. This community is also called Kshatriya Komarpant. Socially and educationally it is very backward.

KSHATRIYA LADAR:

1. **T. Nanjappa,** Secretary, Mysore Samsthana Kshatriya Ladara Sangha. 2. **P. B. Yeligar,** Secretary, Akhila Bharatiya Lad (Yeligar) Samaj, Dharwar. 3. **M. H. Yeligar,** President, Akhila Bharatiya Lad (Yelligar) Samaj Dharwar. 4. **M. R. Baliah,** President, Mysore. 5. **T. Huleganna,** Vice-President, Mysore. 6. **V. Srikantaiah,** Treasurer. 7. **G. E. Nanjappa,** Office Bearer, Mysore.

The synonymous name for Ladars is Kshatriyas. They are socially and educationally backward. They are Hindus, and their mother-tongue is Chowrashi, which is an admixture of Hindi, Marathi and Gujarathi. It has no script. The main occupation of the community is business and petty trade.

KSHATRIYA VEELYAGARA:

1. **B. Dayananda Rao,** son of B. Lakshman, Attawar Mission Compound, Monkey Stand, Mangalore-1. 2. **Monayya,** son of Lokmyya, Mangalore.

The population of Kshatriya Veelyagara community might be about 450 spread out in the town of Mangalore and in some villages in Udipi Taluk. The caste has no traditional occupation, but they are engaged either as agricultural labourers or beedi rollers. The origin of the caste cannot be traced. In the official records Kshatriya Veelayagar community goes as Kshatriya, but not as Veelyagara. The customs, manners and habits are similar to those of Koteyar

(Ram Kshatriya) community, but there are no inter-caste marriages between them. It is a non-vegetarian community.

KUDBI:

Venkappa Gowda, B.Sc., B.Ed., Teacher, S.D.P.T., High School, Katil, Mangalore Taluk, South Kanara District.

Kudbis in the district of South Kanara are a hill-tribe. They live in isolation in the forests. Their language is Marathi-mixed-Konkani. They have their own culture, quite distinct from the cultures of other communities. Before the reorganisation of the State of Karnataka, they were treated as a Scheduled Caste. They are untouchables. Now, they have been excluded from the list of Scheduled Castes. They catch porcupines and rabbits. They collect herbs from the jungles and sell in the market to augment their income. They live in huts.

KUMBARA:

1. **A. Annayyappa,** Secretary, Kumbara Sangha, 218, Sri Anjaneya Swamy Temple, Kumbarapet, Bangalore. 2. **B. V. Ramachandrappa,** President, Kumbara Sangha, Bangalore. 3. **S. Sunder Raj,** Vice-President.

There are two sections amongst Kumbaras—one Lingayat section and the other non-Lingayat section. The traditional occupation of Kumbaras, in general, is making earthen vessels for use by poorer people, particularly the rural people. The nature of occupation is such that there is no scope for employment of improved machinery for manufacture of earthen vessels . Their profession is very unremunerative. They are socially and educationally backward. There is no representation of the community in public services.

KURUBA:

1. **H. Chikkanna,** B.A., President, Karnataka Pradesh Kurubara Sangha, Bangalore. 2. **S. Siddegowda,** Chairman of the Hostel, Bangalore. 3. **H. B. Thimmaiah,** Ex-Municipal President, Virajpet, Coorg. 4. **S. N. Eshwarappa,** Advocate, Shimoga. 5. **Gavi Siddappa Belawadi,** Ex-M.L.C., Belgaum District. 6. **M. R. Ramanna,** Vice-President. 7. **N. S. Nagaral,** Chairman, Bijapur District Sheep Breeders and Wool Weavers Co-operative Society, Bijapur. 8. **D. Lingaiah,** Ex-Municipal President, Mysore.

The population of Kuruba caste is between 30 and 31 lakhs. The Nagana Gowda Committee had under-estimated its population. More than 95 per cent of Kurubas are residing in rural areas and even where they live they have segregated themselves at the outskirts of the village. Basic amenities like water, street light, etc., are

denied to them. They live in dirty and unhygienic conditions. They are economically poor; their dwellings are mostly huts with one or two apartments. The majority of the Kurubas are engaged in sheep-rearing, blanket weaving and agricultural labour.

Literacy is almost nil. In the hierarchy of castes, Kurubas occupy a low position. They are discriminated against in religious and social matters. They are considered untouchables amongst the touchable classes.

Reservation should be made for Kurubas in various statutory and non-statutory bodies, and also in Taluk Development Boards, Municipalities and Panchayats since Kurubas are politically very weak.

Reservation under Article 15(4) and 16(4) should not be restricted only to 50 per cent. There could be more than one list of backward classes. For assessment of educational backwardness, pass in S.S.L.C. or matriculation should be the basis.

H. B. Thammaiah, President, Town Municipal Council, Virajpet, President of Freedom-fighters Association, Ex-Vice-President, Agricultural Produce Market Committee, Virajpet.

The Kadukuruba, Jenukuruba, and Bettakuruba are different from the other Kurubas, namely, Halukuruba, Kambolikurubas, Nadukuruba and Oorukuruba.

Betta, Jenu and Kadu kurubas are hunters, and they are living in isolated areas in the forests. Their way of life, culture and language are primitive.

N. Mallappa, Chairman, Karnataka Sheep and Wool Development Board, Bangalore.

There are a good number of Woollen Co-operative Societies in the State, and so also a good number of Sheep rearers Associations. The majority of associations have now become defunct. The Presidents of those Associations belong to Kuruba community. There are 146 Primary Co-operative Societies, which are the members of the State Woollen Weavers Co-operative Society. Government finances the said institutions by way of outright grants, subsidies rebates on the sale of goods, maintenance allowances, payment of salaries to the servants and working capital.

KURUHINA SETTY:

B. V. Ramanna, M.A., L.T., President, South Coorg Kuruhina Setty Association, Bittangala, Virajpet Taluk, Ex-District Educational

Officer, Mangalore, Ex-Vice-Principal, College of Education, Mangalore.

In the district of Coorg the Kuruhina Settys are planters and agriculturists, but in the remaining areas of the State their traditional occupation is silk weaving. The criteria mentioned in the questionnaire are exhaustive. Some of the Kuruhina Settys have embraced Veerashaivism. Of late, there have been marriages between the non-Lingayat Kuruhina Settys and Lingayat Kuruhina Settys. There is no distinction between the two. However, they all go as Kuruhina Settys.

1. **B. Siddappa,** A.M.I.E., Secretary, Kuruhina Setty Association, Bangalore. 2. **B. R Neelakantappa,** Merchant, Bangalore. 3. **B. R. Ramachandraiah,** Merchant, Bangalore.

The population of Kurruhina Settys may be about 2 lakhs. They also go as Bilimagga, because they are engaged in weaving white dhotis. The s ynonymous names for Kuruhinasetty are Bilimagga, Sale, Koshti. Non-Lingayat Kuruhinasetty girl when married to Lingayat-Kuruhinasetty bride-groom, is made to go through the initiation ceremony of wearing Lingam. When Lingayat-Kuruhinasetty girl marries a non-Lingayat Kuruhinasetty boy, it is left to the discretion of the girl either to continue to wear the Lingam or to discard it. There are some communal hostels for students, and Mutts or Monasteries. Kuruhina Settys claim to be Vaishyas occupying the third rank in the caste hierarchy. They do not belong to Shudras. There are some belonging to Vaishnava cult and some belonging to Shaiva cult, but there have been inter-marriages. Some have gone as Kuruhina Settys and some have gone as Veerashivas in the official records.

1. **Basappa Kattappa Anand,** Vice-President, Shree Kuruhinasetty Yuvaka Mandali, Gadag-Betgeri, Dharwar District. 2. **Narayan Narasappa Madagundi,** Hon. Secretary. 3. **G. Hutchappa,** 4. **Shankarappa Adiki,** 5. **Sanna Jambanna P. Shavi,** Members.

Kuruhinasettys, a section of weavers, whose traditional occupation is weaving, are engaged in the production sarees used mostly by the village women-folk. Of late, they have taken to large scale production of improved varieties of sarees by employing power-looms. On account of the emergence of textile mills which produce sarees in large-scale of finer variety, the demand for coarse products has gone down considerably, and so, the people who are traditional weavers have been rendered unemployed or they have taken to other trades or occupations. A section of Kuruhinasettys are Lingayats. The Lingayat section are vegetarians and they wear Lingam. The non-Lingayat section are non-vegetarians and they do not wear Lingam. Those who wear Lingam, have gone as Lingayats in the official records.

MARATHA :

1. **H. Krishnaji Rao Hekke**, Central Organising Secretary, Karnataka Kshatriya Maratha Parishat, Bangalore. 2. **M. P. Ningappa**, Secretary, Maratha Vidyavardhak Sangha, Davangere. 3. **B. Venkata Rao**, B.Sc., Bangalore. 4. **N. Manohar Rao Maney**, Bangalore. 5. **R. Achut Rao Scindhia**, B.A., Bangalore. 6. **M. S. Narayan Rao Thakke**, Bangalore. 7. **K. Ramachandra Rao Chavan**, Bangalore 8. **Hanmant Rao Sindhe**, Merchant, Davangere, 9. **P. V. Madhav Rao Pawar**, Engineer and Contractor, Bhadravati 10. **P. R. Kadam, B.A.**, Gokak.

Marathas are also called " Kshatriya Marathas ". Formerly the Marathas were in military service. They go by different names in different areas like Arer, Gouli, Kshatriya. Their language is Marathi.

The population of Marathas in Karnataka was about 10,50,000 in 1961. In 1971 the population is around 12,50,000. The Census authorities have mistaken marathi language for the Maratha caste and enumerated all people speaking Marathi as belonging to Maratha caste.

Qn. by Chairman : In the border areas like Supa, Nippani, Khanapur, Bidar and other places, people belonging to Lingayat, Beda, Reddy and other castes also speak Marathi at home. Therefore, would you say that the Census authorities returned those Marathi speaking people also as Marathas ?

Answer : In respect of those areas the Census authorities have not committed any mistake though Lingayats and other caste people speak Marathi at home. It is only in Old Mysore area the Census authorities have committed mistake in not returning the Kannada speaking Maratha community people as Marathas. Darzis or Bhavasara Kshatriyas have also gone as Marathas.

Marathas have no traditional occupation as such, but they have taken to all sorts of occupations like, trade, commerce and industry, petty business, service and agriculture. This community has no representation in the cadre of IAS, IPS and Heads of Departments, Secretaries to Government, Chief Engineers, Superintendents of Police etc.

MADIGA : (Scheduled Caste)

C. Narasimhaiah son of Chikka Rachappa, Babuji Nagar, (Behind Fort), Chikkaballapur, Kolar District.

Though a provision is made by the Government for grant of lands, the Madigas are discriminated against by the officers while granting the lands.

NAYAKA (Bedar) :

1. **Chandrasekar T. Guddakalu,** MLA, Gokak (ST Reserved), President, All-India Nayaka Sangha, Bangalore. 2. **C. Narayana,** Secretary General, Bangalore. 3. **S. Hanumanthaiah,** B.A., B.L., Advocate, Secretary, Sri Valmiki Vidya Sangha, Bangalore. 4. **P. Dasanna,** Retd. Dairy Officer, Co-operation Department, Bangalore. 5. **K. N. Muthappa,** Kalavara, Chikkaballapur Taluk. 6 **K. Ramaiah**, Retd. Official, Bangalore.

Nayakas are a section of Bedars. The traditional occupation is hunting and fowling, and they augment their income by resorting to criminal activities like dacoity, robbery and theft. The other names of Bedars are, Talwar, Valmiki, Nayakamakkalu, Parivara, Nayakawadi, Beda, Berad, Vedan and Boya. Bedars are ex-criminal tribes in the Bombay and Hyderabad Karnataka areas and they have been treated either as Scheduled Caste or as Scheduled Tribe in other States like Maharashtra, Kerala, Orissa, Rajasthan, Gujarat etc. A section of Bedars called Valmikis are scavengers. Those who go as Nayaka in Bombay Karnataka area are treated as a Scheduled Tribe.

NAYINDA :

1. **B. K. Hanumanthaiah,** Vice-President, Mysore State Savitha Samaj, Bangalore. 2. **K. Venkataswamy,** Secretary. 3. **Nanjundappa,** President, Karnataka State Bajanthri Kshemabhivriddi Sangha, Bangalore.

The caste goes by different names in the State. They are: Bajanthri, Nayinda, Kelasiga, Bhandari, Nayanaja Kshatriya, Nayanaja Bhargava, Navaliga, Nayi, Napitha, Hadapada, Kshowrika, Kasta Maduvava. They are all Hindus. Though the caste describes itself as " Nayi Brahmin " and " Nayanaja Kshatriya ", in fact, it does not belong to either Brahmin or Kshatriya caste in the traditional sense. In the official records they have gone as Bajantri, Nayinda, Kelasiga, Bhandari, Napitha, Hadapada and Kshowrika. Some of the caste people have embraced Lingayatism. In rural parts, Nayindas do not render service to the Untouchable communities. Some of the Nayindas are pipers at the marriage and other religious ceremonies.

NAYUDU : (Gavara)

P. C. Adiseshachalam, Controller, Southern Railway, Mysore.

There is a section called Gavara amongst Nayudus. They are bangle sellers, and some are petty traders.

PARIVARA :

1. **S. Sanjeevaiah,** B.A., B.Com., B.L., Advocate and Ex-President, Mysore Municipality. 2. **R. Nagaraj,** Yelandur. 3. **R.**

Venkataranga Naik, President, TDB., Chamarajanagar, 4. **B. P. Mahadev,** Secretary, Mysore District Nayaka Officers Association, Mysore. 5. **Dr. B. Gurulingu,** Secretary, Kollegal Taluk Nayaks Association, Kollegal. 6. **Huchaiah,** Member, TDB., Mysore. 7. **R. Muniswamiah,** Mysore. 8. **M. Hanumanthaiah, B.A., B.L., B.Ed,.** Secretary, Mysore District Nayakara Sangha, Mysore. 9. **M. Mada Naik,** Ex-Municipal President, Gundlupet. 10. **Patil Maridanda Naik,** Udburu, Mysore Taluk.

Its synonymous name is Raja Parivara. It is distinct and separate from Besta or Gangakula. It is to be found in the district of Mysore. Originally, the Parivaras were Palegars as were the Bedars. They were recruited in the army by the Maharaja of Mysore. Now they have taken to menial occupations and agricultural labour. Customs and manners of Parivaras are exactly the same as those of Bedas. There have been marriages between the Parivaras and Bedas. Census Reports right from 1871 relating to Mysore district show Parivaras separately from Gangakula. Parivaras have separate colonies and so too the Gangakulas. Certain streets in the same village or town are named separately as Gangakula street and Parivara street. However, there have been inter-caste marriages between Parivaras and Gangakulas. The names and surnames of the people of Parivara community are exactly the same as those of Bedar community. The names of septs (gothras) of Parivaras are similar to those of Bedars. The Parivaras claim their descent from Valmiki and Kannappa, and so too the Bedars. As the Bedars were inferior village servants or sepoys in the military, the Parivaras were similarly village servants and sepoys. The State Parivara Association was registered in No. 1325, dated 22nd February 1924, by the Registrar of Joint Stock Companies in Mysore under the Mysore Societies Registration Act, No. 3 of 1904. The first Annual Report printed in 1925 is produced to substantiate the said facts.

PARIVARA BHANT:

B. D. Seenappa Naika, son of D. S. Devappa Naika, Chief Officer, (In-charge), Town Municipal Council, Virajpet, Coorg District.

The Parivara Bhant community is different from the Parivara, Raja Parivara or Nayakas of Mysore and it is also different from the Bhunt caste of South Kanara district. The Parivara Bhants have no similarity with Nayaks of Mysore. The population of Parivara Bhant in Coorg and South Kanara districts is about two thousand.

RAJAPUT:

1. **S. Pratap Singh,** President, Rajput Mahasabha, Bangalore, Retired Assistant Commissioner, Bangalore. 2. **Major M. R. Narayan Singh,** Bangalore.

The figures arrived at by the Nagana Gowda Committee were not correct and they were not based on Census Reports. Some of the Rajaputs were counted as Kshatriyas and so the population of Kshatriyas was shown to be more than what it actually was. The population of Rajputs in 1971 was 1,10,000.

Rajputs speak either Hindi or Hindustani, though in schools and colleges they study Kannada. The other sections of Rajputs are Bondily, Raghuvamshi, Hindustani, Pardeshi etc.

'Rajput' is a generic term which includes Kshatriyas and others. In Karnataka, Rajputs go as Kshatriyas, but the majority of them go as Rajputs. The traditional occupation of Rajputs was military service. After the advent of Britishers Rajputs took to police and military service, but the majority of them are engaged in agriculture, sheep breeding, tailoring, petty business, trade and industrial labour.

RAJU :

1. **D. Gangaraju,** Retd. Kannada Lecturer, Rajajinagar, Bangalore. 2. **Killedar Thirumala Raju,** B.A., Principal, Panchayatraj Training Institute, Kolar. 3. **Dr. A. Shankar Narayana Raja Urs,** M.B.B.S., Medical Practitioner, Shimoga.

Raju caste goes by other synonymous names like, Raju, Rajuvar, Aarasumakkalu and Rachevar. The population of Raju caste is between 10,000 and 12,000 to be found in the Districts of Chickmagalur, Tumkur, Kolar, Shimoga, Hassan and Bangalore. The traditional occupation of Raju community is agriculture. Rajus belong to the Royal family of Vijayanagar and after the fall of Vijayanagar empire they migrated to various parts of the country. They are employed in military services. Some of the Raju community people go as Kshatriyas, some as Kshatriya Raju, some as Arasumakkalu and some as Arasu in the official records.

RAYARAWATH :

1. **M. P. Govindaiah,** Retd., Tahsildar, Tumkur. 2. **C. V. Venkata Rawth,** L.MP, Retired Medical Practitioner, Bangalore. 3. **A. V. Puttaramaiah,** Teacher, Tumkur.

The traditional occupation of Rayarawath community was military service in the cavalry section during the Vijayanagar period. The population of the caste might be 1500 to be found in the villages of Channarayapatna, Channapatna and Hunsur Taluks. They are agricultural labourers and lime-burners. Some are engaged in tailoring.

Rayarawaths have been included amongst Kshatrabanu, Maratha, Baniya, etc. The Rayarawaths are also included amongst Kshatriyas because they are a section of Kshatriyas.

SADARU:

1. **G. V. Shantharaju,** B.Sc., B.L., High Court Government Pleader, President, Sadara Vidyabhivriddhi Sangha, Bangalore. 2. **M. S. Mallaiah,** Secretary. 3. **S. Nanjunde Gowda,** Sadarahalli, Gowribidanur Taluk. 4. **S. C. Gangegowda,** Madhugiri Taluk 5. **Hanumantharaya,** Kannada Pandit, Bangalore.

The population of Sadaru is about 45 thousand to be found mostly in Gowribidanur Taluk. 30 per cent of the population owns lands. The extent each family owns varies between 5 and 10 acres. 20 per cent of the population is landless. There are very few people who have taken to business and trade. Sadaru worship both Vishnu and Shiva. They are strict vegetarians. They are not suffering from any social disabilities. Indeed, they are the respected people in the society. They are socially backward because of their economic backwardness. Majority of the people are residing in rural areas. 'Sadaru' is considered to be a section of Jains. Some embraced Veerashaivism and some remained as a section of Jains. The third section belongs to Hindu community.

The judgment of the Supreme Court in Balaji case to the effect that social backwardness is relatable to economic poverty, suffers from lack of proper understanding of the historical perspective in which the caste system is allowed to grow.

Reservation under Articles 15(4) and 16(4) could exceed 50 per cent.

Government should constitute a separate and independent machinery for evaluating the achievements made by the backward classes.

SOMAVAMSHA ARYA KSHATRIYA:

1. **H. R. Srinivasa Murthy,** Convenor, Somavamsha Arya Kshatriya Seva Sangha, Bangalore-53. 2. **S. Krishnaraju,** Office-bearer. 3. **S. A. Sampangiramaraju,** Office-bearer. 4. **G. S. Rangaraju,** Office-bearer. 5. **R. Balaramaiah,** Office-bearer. 6. **S. N. Mallaiah Raju,** Office-bearer. 7. **P. Rangaraju,** Office-bearer. 8. **A. M. Rajavarma,** Office-bearer. 9. S. **N .Neelekantaraju,** Office-bearer. 10. **N. Ramachandraraju,** Office-bearer.

The traditional occupation of this caste is carpentry, painting and gold and silver smithy. The population of this caste is about 18,500 to be found mostly in the city of Bangalore and at Mysore, Shimoga. Madhugiri and Hospet. The mother-tongue is Telugu and Kannada. They are both Shivaites and Vaishnavaites. Their synonymous name is Arya Kshatriya. They have no adequate representation in services. There is not one Legislator, and not one I.A.S. or I.P.S. Officer. Politically they are backward. They have been hard-hit after the introduction of Gold Control Order.

SOMAVAMSHA SAHASRARJUNA KSHATRIYA :

1. **Prof. K. D. Basava,** M.A., M.Com., J. G. College of Commerce, Hubli 2 **R. A. Kalburgi,** Advocate, Bangalore. 3. **Kabadi Venkusa,** President, Somavamsha Sahasrarjuna Kshatriya Sangha, Bangalore 4. **K. Venkata Rao**, Secretary. 5. **Krishnasa Gujarathi,** Secretary. 6. **M. Subbanna,** Office-bearer. 7. **Khoday Krishnasa,** Office-bearer. 8. **D. R. Nagaraj,** .Office-bearer. 9. **P. S. Solanki,** B.Sc., B.Ed., Head Master, Sri Durgadevi High School, Hubli.

The synonymous names for this caste are Pattegar, Khatri, Kshatriya, Shavuji, and the traditional occupation is weaving sarees and other types of cloth. Majority of the people are living in urban areas. There are no I.A.S., I.P.S., and Class I Officers from this community. The community is not that forward as are the Brahmins and the Lingayats.

This community is educationally backward. They are non-vegetarians. These people have now taken to tailoring, petty trade, ribbon and label making etc. These people are to be found at Ranebennur, Hubli, Gadag, Bijapur, Harihar, Belgaum, Davangere, Mysore, Bagalkot and Chitradurga. The language of this community is an admixture of Hindustani, Gujarathi, Marathi and Hindi. Its population is about 50,000. Somavamsha Sahasrarjuna Kshatriyas are different from the other groups like Kalals, Tigalars and Rajputs who also go as Kshatriyas. It is, therefore, not possible to find out their exact population.

SOURASHTRA :

K. V. Ramaprasad, Assistant Superintendent, Helicopter Transmission Assembly, Hindustan Aeronautics Ltd., Bangalore-17.

Sourashtra is not the name of a caste. Centuries back, people from Sourashtra migrated to South India but they have forgotten their original castes. It is doubtful if there are Sourashtra people in Karnataka. However, they are to be found in Madurai in Tamil-Nadu, most of whom are businessmen, doctors, engineers and textile mill workers.

SWAKULA SALI :

1. **Gnanoba,** Secretary, Swakulasali Sangha, No. 67, Huriopet, B. V. K. Iyengar Road Cross, Bangalore-2, 2. **H. V. Ramappa,** President of the Sangha. 3. **M. N. Gangappa,** Vice-President. 4. **S. Gangadhar,** Assistant Secretary. 5. **S. G. Eswar,** Treasurer. 6. **C. V. Parameshwar Rao,** Director.

The traditional occupation of Swakula Salis is weaving. Of late they have taken to tailoring also. They are engaged in weaving silk and art-silk and cotton cloths. Most of the Swakula Salis are residing in urban areas. Some have power looms, and a large section has handlooms. Some of their people have gone either as Kshatriyas or as Marathas. They do not have Gazetted Officers in Government service and they are below Brahmins and Lingayats in the hierarchy. They wear cross-thread and they invite Brahmins for religious ceremonies. Their population is about forty thousand.

1. **T. T. Divate,** Secretary, Akhila Karnataka Rajya Swakulasali Sangha, Gadag-Betegeri, Dharwar District. 2. **K. B. Gachikariyappa,** Vice-President of the Sangha, 3. **B. A. Ganganna,** and 4. **S. R. Sakhare,** Members of the Sangha.

The mother-tongue of Swakula Salis is Marathi. It is a section of weaver community. It should be separated from the Neygi community, and shown separately.

THIGALA :

1. **T. V. Thimme Gowda,** B.Sc., B.T., M.A,(London), President, Mysore State Agnivamsha Kshatriya (Thigala), Vidyabivridhi Sangha, Bangalore, Retired Additional Director of Public Instruction, Mysore Bangalore, Ex-Director of Text Books, Mysore Bangalore. 2. **T. V. Thimmaiah,** B.A., Joint Secretary and 3. **C. G. Marigowda** Treasurer, 4. **B. Muniswamy,** M.A., B.L., Lecturer in History, College of Arts and Science, Visveswarapuram, Bangalore-4. 5. **P. Raman,** B.Com., B.L., Ex-Secretary, Mysore Shambukula Kshatriya Sangha, Bashyam Park, Seshadripuram, Bangalore-20. 6. **S. M. Munivenkatappa,** M.A., President, Karnataka Vahnikula Kshatriya (Thigala) Seva Samithi, Bangalore, formerly Journalist. 7. **Jayaram,** Land-lord, Vice-President. 8. **Dr. V. Ramadas,** Member, Karnataka Vanhikula Kshatriya (Thigalara) Seva Samithi, Bangalore, Assistant Director, Animal Husbandry Department, Bangalore.

Tigalars have different sections in their community like Agnivamsha Kshatriya, Ulli Thigala, Yele Thigala and Arya Thigala. The community does not suffer from any religious and social disabilities, but they are economically poor. Majority of the people are landless workers in gardens. Generally, the people of this community grow vegetables and fruits. Though the community calls itself Kshatriya, actually it is a Shudra section. There are no I.A.S. and I.P.S. Officers from this community. There is no difference amongst Agnikula Kshatriya, Vanhikula Kshatriya and Shambukula Kshatriya.

The community is engaged in growing fruits, vegetables, flowers etc. The average holding of land per family is about one acre, and very few individuals own land exceeding 4 acres.

THOGATAVEERA :

1. **M. B. Gurappa,** Organising Secretary, Thogataveera Sangha, No. 22, Sampangi Tank Road, Bangalore-27. 2. **B. T. Venkataramaiah,** Vice-President of the Sangha. 3. **C. Narasimhaiah.** 4. **V. Narayanaswamy,** 5. **S. F. Thogataveera,** 6. **Chaluva Krishnasetty,** Members of the Sangha.

Padmasali, Kuruhina Setty, Devanga, Swakula Sali, Pattasali and Patwekar constitute a class of people engaged in weaving. But Thogataveeras are a distinct and separate caste without any relationship with the other sections. Thogataveeras are engaged in the manufacture of cotton cloth, mostly coarse in quality, unlike the Patwekars and Devangas who are engaged in the manufacture of silk cloth. Some people have gone as Thogataveera and some have gone as just Neygi. They are economically backward.

VISWAKARMA :

1. **M. Neelakantan,** B.A., Accounts Officer, Accountant-General's Office, Bangalore, Vice-President, Mysore Rashtriya Viswakarma Samaj, Bangalore and Working President of Akhila Bharatiya Viswakarma Mahasabha. 2. **Birur Vishveshwaraiah,** B.Sc., B.L., Chairman, Youth Forum, Akhila Bharatiya Viswakarma Mahasabha, Director, Mysore Rashtriya Viswakarma Samaj, Bangalore. 3. **B.P. Shamanna,** Director. 4. **B. Harischandrachar,** Eiditor, Viswakarma, Director. 5. **Krishna Gopal,** Secretary. 6. **P. B. Maniyaru,** Member, Working Committee. 7. **B. K. Ramachandrachar,** Member. 8. **P. O. Narayanachar,** Member. 9. **A. M. Gundappachar,** Member. 10. **L. Rajachar,** Bangalore. 11. **S. Ramalingam,** Secretary, Bangalore Viswakarma Mahasabha (Regd.), Bangalore.

Viswakarmas in their origin are Brahmins. There are five sections following different occupantions, **viz.,** blacksmithy, carpentry, bell-metal smithy, sculpture, gold and silver smithy. They claim superiority over Brahmins, but in course of time they were relegated to a lower status.

Due to the starting of industries, the artisan class in general received a set-back in their occupations. Mass production of utensils, introduction of modern implements in carpentry, blacksmithy and metalsmithy, displaced Viswakarmas from their traditional occupations. Viswakarma depend upon the agriculturists for their living. Wages are paid in the form of grains at the time of harvest. They are economically backward. Viswakarmas are also called Viswakarma Brahmins.

1. **M. V. Soorachari,** B.A.,B.L., Advocate, Bangalore, Convenor of the Backward Classes Cell, Karnataka Pradesh Congress Committee (O). 2. **G. Nanjappachar,** Bangalore. 3. **Silpi Shyamachar.**

4. **T. N.Shivarajachar,** Tumkur. 5. **R. Channachar,** Tumkur, and 6. **Acharya K. Ramalingam,** Freedom-fighter and Journalist, Bangalore.

Viswakarmas are found mostly in villages. After the introduction of gold control order, they have been displaced from their traditional occupations. There are no I.A.S. and I.P.S. officers, and there are very few Gazetted officers. There are no legislators. Viswakarmas do not call themselves Brahmins, but they are inferior to Brahmins in the social scale of honour. Viswakarmas have their own priests, and they do not invite Brahmins. They have their own temples and Mathadhipathies.

UPPARA:

1. **Dr. S. Bheemappa,** M.B.B.S., M.S., Associate Professor of Surgery, Victoria Hospital, Bangalore. 2. **S. Lepakshaswamy,** Chitradurga. 3. **M. R. Kopp,** Advocate, Gokak. 4. **V. R. Devaraj,** Chickmagalur. 5. **G. I. Bhagoji,** Gokak. 6. **B. B. Toli,** Gokak 7. **L. L. Hejjegar,** Gokak. 8. **J. P. Siddappa,** Treasurer, Bangalore. 9. **K. Bheemappa,** Davangere. 10. **M. Surya Chetty,** Bangalore. 11. **S. Somaiah,** Bhadravathi. 12. **M. S. Badakali,** Advocate, Navalgund. 13. **Gurusidda Setty,** Madhuvana Halli Mysore District. 14. **S. Mariswamy,** T. Narasipur Taluk. 15. **M. M. Hulli,** Gokak. 16. **S. B. Yadav,** Bangalore. 17. **L. S. Gotar,** Naganur. 18. **S. Y. Babal,** Saundatti. 19. **H. S. Gollapure,** Gokak. 20. **K. R. Kenchappa,** Vice-President, Uppar Sangha, Saundatti.

Uppara caste people are engaged in the occupation of earth-salt making. After largescale production of sea-salt, they have been uprooted from the profession. The present-day occupations are agricultural labour, menial labour and masonry work. Almost 100 per cent of the people are illiterate, and are living in villages. They are segregated in dirty places where any basic amenities like water, road and street light are not provided. They are dwellers in huts made of straw, and walls made of mud. Education is completely extinct. They do not have representation in Municipalities, Taluk Development Boards and Panchayats.

In the social scale of honour, they occupy a low position. They suffer from disabilities which are similar to the ones under which the Harijans are suffering. The Nagan Gowda Committee under-setimated the population of Upparas.

VODDAR (BHOVI):

1. **G. Basavannappa,** Vice-President, Akhila Bharata Voddar Sangha, Bangalore, Ex-Deputy Minister for Health, Government of Karnataka. 2. **Gurappa Sudi,** Organising Secretary. 3. **V. Hanumanthappa,** I.A.S. (Retd.) Ex-Member, Mysore Public Service Commission, Bangalore.

In Old Mysore area Voddars are a caste specified in the list under Article 341. In the Bombay Karnataka area they are considered an Ex-Criminal Tribe. The traditional occupation of Voddars is stone-cutting and earth-digging. Their ocupation is very low and unremunerative. The place of their habitation is isolated from towns and villages and their dwellings consist of low thatched roof huts.

VOKKALIGA :

1. **K. R. Marudeve Gowda,** President, Vokkaligara Sangha, Bangalore, Retd. I.A.S., Officer, Ex-Director, Social Welfare, Mysore Government, Ex-Member, Mysore Public Service Commission. 2. **Guthale Gowda,** General Secretary. 3. **B. T. Parthasarathy,** B.A., B.L., Advocate, Member, Executive Committee of Sangha, Principal, V.V. Puram College of Law, Bangalore. 4. **K. Narayanaswamy,** Advocate, Member, Executive Committee, 5. **J. Lingaiah,** Ex-Mayor, Corporation, Vice-President, Vokkali gara Sangha. 6. **M. L. Mallikarjuna,** Advocate, Member, Executive Committee. 7. **C. S. Balakrishna Gowda,** Ex-M.L.C., Chairman, Karnataka Finance Corporation, Bangalore.

Vokkaliga community originally consisted of Gangadikar, Marasu, Kunchitigar, Reddi, Namadhari, Hallikar, Dasa, Beralukodo Vokkaliga and Musuku Vokkaliga groups. They are a homogeneous community now. There have been inter-caste marriages in the community. From at least 1891 all these groups have gone as Vokkaligas at the Census enumeration.

Vokkaliga community is wide-spread in the whole of South India, including the integrated areas of the new State of Karnataka.

The Bhunts of South Kanara have now become members of the Vokkaligara Sangha. Vokkaligas are agriculturists by profession, as the name suggests, and they live in rural parts. They are Shudras, and so they have a lower status in the hierarchy of castes. They suffer from religious disabilities as any other Shudra caste suffers. Vokkaligas are not admitted on terms of equality in the Hindu temples belonging to superior castes. Vokkaligas do not have monasteries or Mutts of their own, nor do they have temples. About 95 per cent of Vokkaligas are living in rural parts and about 90 per cent of them are engaged in agriculture. 15 to 20 per cent of Vokkaligas are landless agricultural labourers. Even the few who hold lands are not big landlords—the extent of land held by each family is less than 5 acres. Agriculture, as a profession, is very unremunerative, and agriculturists depend upon the vagaries or nature. They are living in unhealthy environmental circumstances. Their residential, occupational and economic backwardness has contributed to their social as well as educational backwardness. It is common

knowledge that agriculturists and agricultural labourers are not organized as are the industrial workers.

Vokkaligas have no continuity of employment throughout the year. Though the Vokkaligara Sangha maintains some hostels—about six—admission is open to all castes and communities.

The criteria suggested by the Commission in its Questionnaire are exhaustive. However, at the time of selection of students for admission to educational institutions and candidates for government services, certain factors should be taken into consideration. These factors are: the type of employment of the parents, extent of land held by the parents, the level of education of the parents, traditional ranking in the hierarchy of castes, place of residence of the parents and so on. Vokkaliga community as a whole is socially and educationally backward. Its representation in service is not adequate.

Bhunts of South Kanara are governed by Aliyasanthanam Law, while the other sections of Vokkaligas are governed by Hindu Law. The spoken language of Bhunts is ' Tulu ' while that of the Vokkaligas is Kannada. Vokkaligas do not speak Tulu. The Mysore Backward Classes Committee (1961) headed by Dr. Nagana Gowda had a Vokkaliga member on it, and the said Committee had excluded Bhunts from Vokkaligas. Bhunts are also agriculturists by profession and they are also socially backward as are the Vokkaligas. But they are educationally forward. The approach adopted by the President's Backward Classes Commission under the Chairmanship of Kaka Kalekar in classifying Vokkaligas as ' Rural Vokkaligas ' and ' Urban Vokkaligas ' is not permissible under the Constitution. Vokkaligas as a community should be treated backward. The judgment of the Supreme Court in Balaji case (A.I.R. 1963 SC 649) suggesting a lower standard than the last three high school classes is incorrect. The minimum standard for assessing the educational achievement of a caste or a community is a pass in S.S.L.C.

There can be no two lists of backward classes. There should be only one list.

In Karnataka the population of Backward Classes other than the Scheduled Castes and Scheduled Tribes is between 60 and 70 per cent and reservation under Article 16(4) and 15(4) should be to the extent of 60 or 70 per cent.

Seats secured by Backward Class candidates in the merit pool should not count against the quota reserved for them. If seats or posts are unfilled by members of the Scheduled Castes and Scheduled Tribes they should be made over to the members of the Backward Classes, and *vice-versa*. It is only when candidates from

Scheduled Castes, Scheduled Tribes and Other Backward Classes are not available, the unfilled seats or posts should go to the general pool. So far as employment under Article 16(4) is concerned posts unfilled by the reserved categories should be carried forward for three succeeding years.

The elimination of caste particulars in the Census has harmed the interests of the backward classes. The opinion that the enumeration of caste particulars in the Census would make people caste conscious is calculated. There were castes, and people were caste-conscious even when Census was not conducted prior to 1871.

So far as Old Mysore area is concerned, reservation to backward classes on the ground of their caste or community has been there since 1874. Unfortunately, the Government did not launch a massive scheme providing opportunities to train them to public services. The facilities provided for the backward classes remained only on the statute book, but the object of securing adequacy of representation to all castes and communities has not been achieved. Even in the field of education, sufficient number of schools and colleges have not been opened in the rural areas. The standard of education in the rural areas does not qualify the rural candidates to compete with those educated in urban colleges and in public schools. Although Vokkaligas constitute about 13 per cent of the population they did not start their own educational institutions, the reasons being, they do not have their own monasteries or Mutts ; they have no enlightened people to take Government aid ; and above all their economic condition did not permit them to start their own educational institutions. As the Vokkaligas are predominantly agriculturists they have not taken to trade or commerce. There is absolutely no representation of Vokkaligas in the Central Services. Their efforts were concentrated in securing representation in the State Services only. They did not make any efforts to prevail upon the Central Government for the specification of backward classes.

The Namadhari Gowdas are also a secion of Vokkaligas. Those who have given evidence before the Commission to the contrary seem to be misguided.

The interpretation of the Supreme Court in Balaji case that before a caste or a community is declared backward it should be backward both socially and educationally is incorrect.

The Halwakki Vokkal of North Kanara District do not belong to Vokkaliga community. It cannot be said with definiteness that Tulleru, Mannurkapu, Heggade, Agamudiyan, Maravan, Tottiyan, Kolis, Katars are sections of Vokkaligas, but Kapu, Kamma and Velama are sections of Vokaligas. In so far as the Madras area of the State is concerned, the Kalelkar Commission had not included

Bhunts amongst the Vokkaligas. It is a fact that Bhunt caste came to be included in the Vokkaliga community by the Government for the first time in 1959.

The Criminal and Nomadic Tribes being extremely backward deserve to be categorised separately, and special benefits and measures for their upliftment be made to improve their lot.

NAMADHARI GOWDA :

1. **B. L. Marigowda,** B.A., President, Akila Namadhari Gowdara Sangha, Mysore. 2. **S. G. Doddegowda,** Director. 3. **K. V. Ramaswamy,** Director. 4. **N. K. Channaraj,** Mayamundi, South Coorg. 5. **V. M. Gopalakrishna, B.A., B.L.,** Advocate, Hunsur. 6. **Muddabasappa,** Hunsur. 7. **(Dr.) B. S. Puttaswamy Gowda,** K.R. Nagar Taluk.

Namadhari Gowdas are vegetarians, and they do not belong to Vokkaliga community.

GENERAL

District Social Welfare Officers

1. **T. G. Shivanagappa,** Mandya. 2. **H. P. Raje Urs,** Chitradurga. 3. **C. Puttappa,** Hassan. 4. **C. H. Jacob Lobo,** South Kanara. 5. **S. Basavaraj,** Bangalore Urban District. 6. **M. L. Lingaiah,** Mysore. 7. **M. Badre Alam,** Raichur. 8. **Syed Alauddin,** Bellary. 9. **R. K. Kulkarni,** Karwar. 10. **P. Nagendrappa,** Bijapur. 11. **G. Somashekarappa,** Chickmagalur. 12. **P. G. Lakkannavar,** Dharwar. 13. **T. G. Doddamani,** Belgaum. 14. **S. G. Patil,** Mercara. 15. **A. M. Gurumurthy,** Tumkur. 16. **D. M. Krishnaswamy,** Kolar. 17. **A. M. Channaiah,** Shimoga.

The Government of Mysore (now Karnataka) by various orders has treated certain tribes as Denotified Tribes, Nomadic Tribes and Semi-nomadic Tribes. Though the tribes residing in certain areas of the State have been treated either as Denotified, Nomadic or Semi-nomadic Tribes, their counter-parts in the remaining districts of the State should also have been treated similarly.

Criminal Tribes suffer from the stigma of criminality, and they are looked down upon by the members of other communities. The members of Criminal Tribes are either shunned or avoided by other castes. The Nomadic and Semi-nomadic Tribes, as the description suggests, are wandering tribes who have no fixed place of habitation.

The lists of Scheduled Castes and Scheduled Tribes, issued under Article 341 and 342 respectively, show the inclusion of some Criminal

and Nomadic Tribes. Somehow, the remaining Criminal and Nomadic Tribes have been left out. The economic and social conditions of the Criminal and Nomadic Tribes are akin to those of Scheduled Castes and Scheduled Tribes, though they do not suffer from the stigma of untouchability and they are not residing in isolation in jungles and forests. Tribes who are treated as Criminal Tribes and Nomadic Tribes in Karnataka have been treated either as Scheduled Castes or Scheduled Tribes in other States. The Criminal and Nomadic Tribes are half-way to untouchability and some are inarticulate. However, some of the Nomadic Tribes and Semi-nomadic Tribes listed by the Government of Karnataka have ceased to be nomadic in their character. Government should reconsider the continuance of those tribes in the list of Nomadic Tribes.

The Criminal, Nomadic and Semi-nomadic Tribes generally live in poor and barren places, and they do not own lands or houses, or where they own lands they are barren and uncultivable. They find it difficult to establish contacts wih other sections of the society because of the prejudice in the minds of the advanced sections. They are segregated from the advanced sections on account of social taboos against inter-dining and similar opportunities of association. The literacy amongst these tribes is very low. The members of these tribes are unable, or slow, to pick up training for business or industries or public service. They have poor conception of sanitation. They are indifferent to the education of their children.

The Criminal Tribes and Nomadic Tribes should be treated as a separate category of "Other Backward Classes" and separate provision be made for them in the matter of reservation of seats in educational institutions and posts in public services and also in regard to their economic upliftment. Indeed, some of the Criminal Tribes are likely to be included in the list of Scheduled Tribes when the Bill prepared to that effect is introduced in the Parliament.

Bunda Bestar, a semi-nomadic tribe, in Karnataka, is not a part of Gangakula or Besta.

Pariwara and Raja Pariwara caste in Mysore District is a separate and distinct caste. Indeed, they are neither Bedars nor Gangakulas. Perhaps, the Pariwara or Raja Pariwara caste being a very small community wants to get itself assimilated either with Bedars (Nayaks) or with Besta (Gangakula). They are mostly agricultural labourers.

There is a tribe going by the name "MALERU" which is specified in the list of Scheduled Tribes under Article 342 in so far as old Mysore area is concerned. There is, however, a section amongst Brahmins who are also called "MAALERU". The English spelling of Maaleru, a section of the Brahmins, is similar to Maleru who are

forest dwellers. The Brahmin Maaleru are getting the benefits as a Scheduled Tribe.

Smt. Sreerangamma, Deputy Director of Public Instruction, Mysore.

Although free and compulsory primary education scheme has been in force from 1961 certain castes and communities do not send their children to schools in proportion to their population. The reasons are more than one. Certain castes are economically very poor, and they cannot afford to send their children to schools. Coupled with that, the occupations they follow are such that their children are taken in their occupations for augmenting their earnings. They have developed apathy for education. The advanced communities have opended their educational institutions and free hostels for students of their own castes and communities, and wherever necessary, they grant scholarships also.

Agricultural castes and other inferior occupational castes whose earnings are uncertain and very low, draw their children to work either on land or in their traditional occupations. Though in the initial stages of enrollment the number appears to be nearly proportionate, as years pass, many dropout from the schools. Lingayats in this District (Mysore) have opened sufficiently large number of schools under the auspices of their Mathadipathis. Similarly, the Muslims, Christians and Brahmins have opened their respective educational institutions. These educational institutions are managed by members of their respective castes and communities. However, to give them a secular complexion, few individuals belonging to other castes and communities who cannot be effective, have been nominated on the Managing Bodies. The members of the staff—both teaching and non-teaching in those educational institutions belong in large number to the caste or community founding the institution. Even the Selection Committee is caste biased. Fortunately, a Rule has been made recently for appointing members of Scheduled Castes and Scheduled Tribes to the extent of 18 per cent on the staff. Even so, barring extremely few instances, members of the Scheduled Castes and Scheduled Tribes have not been appointed by the private educational institutions.

Under the scheme of Grant-in-Aid Government contributes to the private educational institutions to the extent of 100 per cent towards the salaries of the teaching and ministerial staff and to the extent of 50 per cent towards construction of buildings. The remaining 50 per cent required for construction of buildings is raised by the management in the form of contributions and donations from the members of the public, and from the parents of the pupils.

K. Puttaswamy, M.L.A., Ex-Minister, Government of Mysore, Bangalore, and Member, Mysore Backward Classes Committee, 1961.

Soon after the appointment of the Mysore Backward Classes Committee in 1960 (headed by Dr. Nagana Gowda), an Interim Report was submitted to the Government. But, before the Final Report was submitted in 1961, one Sri Mahmood Sheriff was appointed as an additional member. In determining the social backwardness of castes and communities, the Committee went on the basis of their castes.

When it submitted its Final Report in 1961, it again took caste as the factor in determining the social backwardness of castes and communities.

Although the Central Government had issued in 1956 a Memoradum on the Report of the Backward Classes Commission headed by Kaka Kalelkar directing the State Governments to conduct socio-economic survey for determining the social backwardness of castes and communities specified by Kalelkar Commission, the State Government did not appear to have conducted such a survey before the Nagana Gowda Committee was appointed. The Nagana Gowda Committee did not conduct any survey, nor did it get any survey conducted by other agencies.

Bhunts were not taken as a section of Vokkaligas before 1956. The educational backwardness of a class could be determined by taking SSLC-pass, because for purposes of recruitment to State services, SSLC is the minimum qualification even for the lowest grade of service. Social backwardness is now come to mean economic backwardness. " In our society, the progress registered by several castes is not the same. They are at various stages of progress. In order to see that facilities earmarked for Backward Classes reach all sections of society, castes, which are sociological units, will have to be taken into consideration. Otherwise, the facilities will not reach them ".

P. S. Thimmappa Shetty, District Harijan Welfare Officer, Madras State (Retd.) Retd. Deputy Collector, No. 23, Laxmi Nivas, Shantinagar, Bangalore-27.

From time immemorial Brahmins had the advantage of education and the non-Brahmins were denied that opportunity. That is the reason why the non-Brahmins secure low percentage of marks in the examinations. Our society is not casteless and classless. All the leaders condemn casteism, but not one leader has made any effort or attempt to banish communalism and casteism from our society. In the matter of admission to technical institutions and recruitment to civil services, the proper yardstick to measure the intellectual attainment of a Brahmin, a non-Brahmin and a Harijan should be in the ratio of 8 : 5 : 3. That is to say, a Brahmin candidate securing 80 per cent marks, a non-Brahmin candidate securing 50

per cent marks and a Harijan securing 30 per cent marks should all be treated equal.

1. **G. L. Nellure Gowda**, President, District Development Committee, Hassan. 2. **Haranhalli Ramaswamy,** M.L.A. and President, D.O.C. Board, Hassan.

The population of backward classes in Karnataka is more than 85 per cent. The remaining 15 per cent of the population, who are advanced, consists of Brahmins, Vaishyas and Jains. In addition, those who pay Income-tax and Agricultural Income-tax would be covered by the said 15 per cent. While determining the backwardness of a particular caste or community, its occupation and income should be taken into account. A family whose income is less than Rs. 8,000 per annum should be considered as backward, irrespective of caste. However, the traditional communities of washermen, fishermen etc., should be treated as backward. All Class IV servants in Government service should be treated as backward. Industrial labourers should be treated as backward. Free education should be given to the backward classes. Government should create opportunities for employment to improve their economic conditions. Social disabilities on the ground of caste are gradually disappearing. Social justice should be secured by lessening exploitation. According to Hindu philosophy, no one should be considered high or low. Every section should devote itself for the good of the entire community. But people do not practise what they preach. Reservation for Scheduled Castes and Scheduled Tribes should continue. To identify backward classes, caste or community should be the ground. The lists of Scheduled Castes and Scheduled Tribes are not exhaustive.

G. B. Seshachar, Manager, Office of the Assistant Commissioner, Sakaleshpur.

Unfortunate girls belonging to poor families are exported from this area (Hassan district and Mangalore district) to places like Bangalore, Bombay etc. Such unfortunate girls have been forced to take to prostitution. Economic security and education should be provided to those unfortunate victims.

M. Vasudeva Nayak, Head Master, D.J. Higher Primary School, Karkala, South Kanara District.

Besides Scheduled Castes and Scheduled Tribes, there are some castes who are similar to Scheduled Castes and Scheduled Tribes in the matter of their backwardness. There should be two lists of backward classes, one list consisting of those castes who are similar to Scheduled Castes and Scheduled Tribes, and the other list consisting of castes who are not so backward.

S. V. Velankar, Secretary, Karkala Rayat Sangha, Karkala, South Kanara District.

Backwardness should be in relation to a caste or a community as a whole. After the introduction of land reform laws, the resumed lands should be distributed not only to Scheduled Tribes and Scheduled Castes but also to Other Backward Classes. Similarly, lands belonging to Government should be distributed amongst Scheduled Castes, Scheduled Tribes and Backward Classes. Kumki Rules should be repealed preventing the land-lords exploiting forest produce for their own use. If Kumki Rules are continued, it amounts to continuing feudalism. By repealing Kumki Rules large areas of land would be available for distribution to the landless people. Minimum Wages Act should be extended to cover agricultural sector also.

CHAPTER XXIII

REMARKS ON EVIDENCE

We have elsewhere shown that the Constituent Assembly did not consider religious minorities as such like Muslims and Christians, as falling within the meaning of the expression " Other Backward Classes ". The Supreme Court in Balaji Case said that Muslims and Christians forming ' groups ' in some States may satisfy the tests of backwardness and that they could also be treated as " Other Backward Classes ".

The Kalelkar Commission, similarly, treated religious minorities like Muslims, Christians, Anglo-Indians, Sikhs and Gurkhas as " Special Groups " falling outside the purview of the Commission.

Our Commission, guided, however, by the ruling of the Supreme Court in Balaji case, stated in its questionnaire that the expression ' Classes of Citizens ' in the context in which it appears in the Constitution means groups of people belonging alike to Hindu, Muslim, Christian, Jain, Veerashaiva, Buddhist or any other religious community or denomination with an element of stability and permanance, and who are readily identifiable by some common and exclusive characteristics. Backwardness of a class of citizens being attributable to various causes, the questionnaire suggested the commonly known causes for identifying any classes which could be termed backward.

We proceeded, therefore, to find out Hindu castes and non-Hindu groups which could satisfy the multiple tests of backwardness.

Evidence was that there are groups amongst Muslims and Christians as there are caste-blocks amongst Hindus. But the Census Reports do not contain separately the population figures of non-Hindu groups. The admission registers maintained by the educational institutions and the service registers of employees do not mention the names of the groups to which the students and the employees of those communities belong. They all go as Muslims and Christians, as the case may be. During the socio-economic survey conducted by the Commission, Muslim and Christian respondents have not given out their group names, though specifically asked.

We similarly excluded Hindu castes whose population particulars were not known, and whose socio-economic conditions were not ascertainable. Those castes number about 396, shown in Statement 4, List III, Vol. II.

The case of Muslims (as also of some Lingayats) was that their community in its entirety should be treated as backward, and not some of its groups. If this argument is accepted, the Commission had to consider the case of Hindu community in its entirety, and not the case of individual castes, or a group of castes.

By the application of multiple tests the Commission have found out certain readily ascertainable groups amongst Lingayats to be socially and educationally backward, and they have been included in the list of Backward Classes.

Similarly, the Commission have included certain Muslim groups in the list of Backward Classes.

So far as Christians are concerned, the evidence related to the case of Harijan converts to Christiantiy. The Commission found it difficult to ascertain the population of Harijan converts to decide their educational, economic and other backwardness.

Hindu castes whose population figures were not ascertainable are not treated backward classes for the same reason. List of Hindu castes without population is at Statement 4, List III in Volume II. We suggest that further investigation be made by a separate agency to ascertain not only from the Hindu community but also from the Muslim and Christian communities, if there are any groups which could be treated backward though their population cannot be ascertained.

Anglo Indians:

Frank Anthony, who is officially designated as ' the Father of the Lok Sabha',being its senior-most member, and a member of the Advisory Committee on Minorities constituted by the Constituent Assembly, stated in his evidence before the Commission that "Those who did not feel that they should get protection as a backward class never put forward any claim....I feel that technically it can be said that the expression ' Backward Classes ' was not intended by the Constituent Assembly to include sections outside the Hindu fold. The framers of the Constitution while formulating provisions for backward classes were thinking of those sections in contradiction to the communities which were not Hindus.....So far as Anglo-Indians were concerned, there was no question of my making any claim to the tag of backwardness. I was able to get special provisions for Anglo-Indian community in the light of the historical and economic circumstances. As I have repeatedly said the community is not and has never been a backward community".

So far as the case of Harijan converts to Christianity, Frank Anthony's opinion is " certain sections of Christians like Scheduled Caste Christians are claiming to be given these benefits. It is not a

correct step. It is difficult to identify their original caste when they were converted some decades ago. The clamour will then be from most of the Christians to the effect that their ancestors were Harijans ".

Christians:

To a question by the Chairman that at the time of drafting the Constitution, the Christian community intimated the Constituent Assembly that they should have no reservation on the ground of their religion but they would be contented if fundamental rights were given in the matter of their religion, culture and educational institutions, Lobo Prabhu, answered " yours as a statement of fact is correct. But the persons who were elevated to this position were through nominations of Government. They had no mandate from the community ".

Scheduled Caste Converts:

Christians' argument is that Art. 341 and the definition of the expression ' Scheduled Castes ' in Art. 366(24) do not speak of Hindu castes only. Nor do those provisions speak of untouchability. So, on the language of those two Articles, their argument proceeded, even non-Hindu groups could be specified in the Schedule under Art. 341. In support of their argument they referred to Art. 342 and Art. 366 (25) by which non-Hindu groups have been specified by the President as Scheduled Tribes.

We have the following answer to them. One need not always go by the letter of the law. Political leaders like Mahatma Gandhi, Ambedkar and Jawaharlal Nehru, political parties like the Indian National Congress, and the Round Table Conference accepted the existence of untouchability only in Hindu society, and those Hindu castes which suffered from the stigma of untouchability were officially designated as Depressed Classes before 1935. By the Government of India Act, 1935, the nomenclature was changed to ' Scheduled Castes '. The debates in the Constituent Assembly make the point clear that only untouchable Hindu and Sikh castes were to be treated as Scheduled Castes. Therefore, we are not inclined to accept the argument that the expression ' Scheduled Castes ' could also include non-Hindu groups. That the list of Scheduled Castes includes some touchable castes cannot be a ground for inclusion of Scheduled Caste converts to Christianity in the list under Art. 341. Inclusion of touchable castes in the list either by inadvertence or otherwise, calls for an immediate measure for their exclusion.

Muslims:

The representatives of the Central Muslim Association conceded the relevancy of criteria suggested by the Commission in the Questionnaire stating that " we have come to a unanimous conclusion that

every criterion is relevant and important. However, in addition to the said criteria from (a) to (k) we have decided to suggest to the Commission an additional criterion to be applied in the determination of backwardness of a *group* or a *class*. The additional criterion we suggest is : their being denied, as a class, equal opportunity in the developmental activities and prosperity of the Nation and in public services etc., as a result of discrimination against them both by the public and Governmental authorities on grounds of religious bias and unfounded political suspicions, resulting in their backwardness—educational, social and economical". They also conceded that the Constituent Assembly treated the case of religious minorities like Muslims separately from the case of the Other Backward Classes. However, their complaint was "We remember how the discussions took place, and unfortunately the attitude the Muslim representatives took at that time was disheartening and the Muslim representatives relied upon the good sense of the majority community in not insisting upon the reservation to Muslims in services, though we remember aright such reservations were intended by the Constituent Assembly when it prepared the Draft Constitution. The attitude of the Muslim representatives on the Constituent Assembly could be attributed to the political upheaval that preceeded the formation of the Constituent Assembly.

The Indian Muslims who were left with no effective leadership in India and those who were on the Constituent Assembly were afraid of asserting their rights".

Veerashaivas (Lingayats) :

The representatives of the Veerashaiva community who gave evidence before the Commission were not unanimous as to whether their community was a part of Hindu society, or it was a non-Hindu community. While some representatives said that for all practical purposes Veerashaivas or Lingayats were treated as Hindus, others stated that their community was outside the four-fold division of the Hindu society, since they rebelled against the Hindu caste system. Although the representatives were indefinite and divided in their opinion, the Commission considered the provisions of various Parliamentary enactments on Hindu Law, Untouchability (Offences) Act, 1955, and court decisions which made it clear that Lingayats or Veerashaivas are a religious denomination of the Hindu community. That this is so is supported by the fact that Census authorities have clubbed the population of Lingayats with Hindus, though efforts in the past were made by the Veerashaivas for their categorisation as a separate religious community.

Though, in principle, Lingayats or Veerashaivas do not accept the *principle of caste* amongst their groups, there are, in fact, groups based on their traditional occupations. The basic principle adopted by the Commission for ascertainment of the *social* backwardness of

a Hindu caste, tribe or community, or a non-Hindu group being its economic backwardness based on occupational and residential backwardness the said principle was applied uniformly to all.

Veerashaivas : (Continued)

On behalf of the Mysore State Veerashaiva Association G. C. Veerappa and G. E. Kotre, General Secretaries, submitted a Memorandum-*cum*-replies to the Questionnaire, but failed to appear before the Commission to give evidence despite repeated summonses issued to them. However, the representatives of the Association, *viz.*, Theggimane, Javali, Sambasivaiah, Puttaswamy and Kothavale gave evidence. The summary of their evidence is to be found in this Volume.

We have dealt with the Memorandum in detail for at least three reasons.

The signatories to the Memorandum/Replies to the Questionnaire of other castes/communities gave evidence before the Commission. But the owo signatories to the Veerashaiva Memorandum, Veerappa and Kotre, did not choose to give evidence.

All the other Memoranda/Replies agreed with the criteria suggested by the Commission as relevant, but the Memorandum of the Veerashaiva Association did not.

The witnesses who appeared before the Commission and whose names were suggested by the Veerashaiva Association stated that they preferred to give evidence in a broad and general way, not necessarily in respect of the Lingayat community.

The Memorandum of the Association states :

1. After 1941, Census Reports did not contain caste particulars. In any worthwhile scheme of development to be formulated for any region, area, caste or community definite facts and figures are a 'must' ;

2. Memorandum is based on 'the presumption' that according to the All India average rate of $2\frac{1}{2}$ per cent increase of population from year to year, the present figure of population of Lingayat (Veerashaiva) community stands in the neighbourhood of 60 lakhs (60,00,000) ;

3. Determination of backwardness based *on caste* primarily offends against the provisions of the Indian Constitution, and would be positively against the spirit of the Constitution itself. Backwardness is a relative term and even within the *same community*, there exist side-by-side, *various sections* of people with varying degrees of backwardness—social, educational and economic.

Karnataka State Archives
(Departmental Library)
ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರಾಗಾರ
(ಇಲಾಖಾ ಗ್ರಂಥಾಲಯ)
ಪುಸ್ತಕ ಸಂಖ್ಯೆ Accession No.
ದಿನಾಂಕ Date

4. The number of Lingayat officers of the I. A. S. is less than ten as against 147 for the whole State. Even in the case of Gazetted Officers, Non-gazetted Officers and skilled technicians it is the same depressing story.

5. Education : The criterion for backwardness is the percentage of literacy in the community as compared with the State average. A pass in the S. S. L. C. Examination should be taken as the test for backwardness for any community.

6. While special attention should be paid to the amelioration of the minority communities hitherto neglected in matters relating to their advancement it would be a wholly erroneous approach to brand the *entire* Lingayat community as not being backward and not entitled to any consideration ;

7. In the interest of social justice, the Lingayat community should not be discriminated against in an attempt to ameliorate the conditions of the hitherto neglected sections of the State's population.

8. " Caste " as even one of the many categories for assessing backwardness of any community would lead to complications and at any rate the Lingayat community would be denied just and fair treatment at the hands of the Commission. There is not a single Divisional Commissioner in the State and no Deputy Commissioner except one actually serving in the Districts of the State. Similarly, regarding heads of Departments, Assistant Commissioners, Tahsildars and officers of similar status in other Departments, the picture is even more disappointing ;

9. Representation in the State Cabinet of Ministers indicates that they (we) have not had a fair deal, though they (we) are fully aware that the Ministry is not formed on the basis of the claims of any particular community. It is the leader's prerogative. Suffice it to say that having regard to the numerical and historic importance of Lingayats in the State, the community should have had at least *two* more representatives in the Cabinet. But that is not to be.

10. The wholly misleading assessment seems to have been made in some quarters, *not excluding the Commission*, that Lingayats form 15 per cent of the total population of the State. The truth is that they (we) form not less than 22-25 per cent of the aggregate population as in the year 1973 based on the calculations made by the States Re-organization Commission and the normal increase over the 1941 figures for population when Census enumeration by caste was permitted by the Government of India.

11. They (we) would specially draw the attention of the Commission to the fact that it is due to a colossal ignorance of

the philosophy of Veerashaivism or a clear understanding and appreciation of the tenets of Veerashaivism that Lingayats should be considered as belonging to a 'caste'.

12. Veerashaivas revolted against the traditional caste system as such.

13. Lingayats formed a self-contained economic group, consisting of persons who follow various professions or occupations such as farmers, labourers, petty merchants, artisans, doctors, lawyers, engineers, etc. Lingayats were outside the pale or purview of the Chatur Varnas (Brahma, Kshatriya, Vaisya and Shudra). It would not be prudent, nor strictly correct for either the Government or the Commission to categorise Lingayats as belonging to any 'caste' as such and determine their future regarding their backwardness.

14. They (we) wish to bring to the notice of the Commission that it is due to a type of malicious propaganda and the curse of jealousy on the part of a few mis-guided people that attempts are being made to deny to the Lingayats their rightful place and deny the privileges and facilities due to them as a set of people who are essentially backward both socially and economically.

15. The historic background to the origin, growth and development of the Lingayats in the State studied in its proper perspective would lead to the inevitable conclusion that Lingayats have as much claim for being treated as backward, just as any other group of people in the State.

1. The Commission agrees with the suggestion that in any worthwhile scheme of development to be formulated definite facts and figures relating to any region, area, caste or community are necessary. The Commission has recommended elsewhere for conducting a comprehensive Census at the earliest, with caste particulars.

2 and 10. The Commission has ascertained the population of a caste/community recorded in the previous Census Reports. The population of every caste and community has been inflated to 1972 on the basis of the average rate of increase of State population. This is made clear in Volume II. The Mysore Backward Classes Committee, 1961, had a Lingayat Member on it, *viz.*, M. S. Patil. The Committee had estimated the population of Lingayats at 15.57 per cent in the State population. The said Committee had proceeded on fictitious figures of population, and the Committee had given a benefit of increase of 0.9 per cent population to Lingayats so far as South Kanara District was concerned. On its own admission, the Committee had inflated the figures arbitrarily. There have been complaints from almost every caste/community that the 1961 Committee did not ascertain the population accurately. The Committee did not give the benefit of increase of 0.9 per cent to other castes and communities.

The present claim of the Veerashaiva Association is that their community has a population of over 60,00,000 or the percentage of its population is between 22 and 25 of the State population.

M. S. Patil wrote a dissenting Note on the backwardess of Lingayats, but did not say that the Committee under-estimated the population of Lingayats. The assumption made by the States Reorganisation Commission that the population of Lingayats in the proposed new State of Mysore would be about 20 per cent, was not based on Census figures. It is to be noted that there was opposition from the Vokkaligas of Old Mysore State for the unification of Karnataka on the ground that the proposed State would be dominated by Lingayats who would constitute about 20 per cent. Exaggerated figure was given, perhaps, to high-light the apprehended political dominance of Lingayats. The States Reorganization Commission, however, stated that even though the population of Lingayats would be 20 per cent, in the proposed new State, the Vokkaligas of Old Mysore could have political combination with the non-Lingayats, who would together constitute 80 per cent. It was not the finding of the States Reorganisation Commission. Nor was the question of population an issue before the Commission.

Almost every caste/community has pleaded before the Commission that its population was much more than what was recorded in the Mysore Backward Classes Committee Report, 1961. For instance, the Kurubas claim that they are 30 lakhs, the Bedars 20 lakhs, and so on, whereas, factually, they are not that large. If the exaggerated population figure claimed by every caste/community is to be accepted by our Commission, the population of the State, which is, about 3 crores in 1972, would be swelled to about 5 crores. The reason why some of the castes/communities claim larger population than what they actually are is that by such claim of larger population the percentage or the ratio of the students of their caste/community and their employees in the Government services would be reduced. The Commission has ignored all such claims not based on the Census Reports.

So far as Lingayats' claim that they are 60 lakhs is concerned, they seem to have proceeded on the basis that every one who wears Lingam is a Lingayat by *community* and every one who wears a Lingam was invariably returned at the Census enumeration as Lingayat. Indeed, some of the people belonging to other castes such as Beda (hunter) and Kuruba (shepherd) castes are wearing Lingam. Nevertheless, they have retained their original caste identity. Some of the untouchable caste people wear Lingam, but in the Census and other official records they have gone as untouchables with their caste names. This is not all. Some of the Reddis and Kunchitigas, who form sections of Vokkaliga community, wear Lingam, yet remaining to be Reddis and Kunchitigas, as the case may be However, we cannot take notice of such things, since one could wear Lingam without becoming a Lingayat. It only shows the cultural impact of

Lingayatism and the influence of hundreds of Mutts and thousands of Swamijis on others. Some Shudra castes, in the process of sanskritization, have adopted the lifestyles of Brahmins, but they cannot be considered Brahmins. A Lingayat may refuse to wear Lingam, and yet remain a Lingayat.

3. The representatives of the Central Muslim Association, the religious heads of Christian community, His Holiness the Swamiji of Sringeri Mutt (Brahmin) and all others have suggested to the Commission that so far as Hindus are concerned, social backwardness should be determined taking caste as a factor. The Veerashaiva Association has not pointed out which provision of the Constitution would be offended if caste is taken as a factor. However, the Commission does accept the statement of the Veerashaiva Association that "within the same community there exist side-by-side various sections of people with varying degrees of backwardness—social, educational and economic". Having accepted that the entire community cannot be taken as a unit to be considered backward or forward, but only certain " sections " who would satisfy the test of " backwardness—social, educational and economic ", the Commission has found out certain sections of Lingayats as socially, educationally and economically backward, such as barbers, washermen, oil-pressers, weavers, etc.

4. The Commission rejects the suggestion that for determination of backwardness (either social or educational) representation in I.A.S. cadre should be taken into consideration. However, the representation of a caste or community in the Gazetted and non-Gazetted Class III services has been taken into consideration for purposes of Article 16(4), provided that it first satisfied the tests of backwardness contemplated under Article 15(4).

5. Literacy percentage cannot be the standard for assessing the educational achievement of a caste or community. Even so, caste- and community-wise literary figures cannot be ascertained. The suggestion by the Veerashaiva Association that a pass in the S.S.L.C. Examination should be taken as a test has been adopted by the Commission.

6 and 7. Backwardness under Article 15(4) cannot be judged in relation to the top castes or communities. The Commission is guided strictly by the tests suggested by the Supreme Court in Balaji and other cases. Commission cannot go by the tests suggested by every caste/community, unless such tests are in consonance with the tests suggested by the judiciary.

8. What is stated in paragraph 4 above, applies also to this paragraph, and the statement that caste cannot be one of the many categories for assessing the backwardness is so vague that the Commission is not able to understand its meaning. To repeat,

the Commission has not gone solely on the principle of caste, in the sense, on the basis of the conventional belief of high and low status of caste-groups known to Hindu society.

9. This grievance should not have been made to the Commission. Even so, the Veerashaiva Association would have done well, if it had stated the representation of Lingayats in the successive seven Cabinets headed by Lingayat Chief Ministers between November 1956 and March 1971. For purposes of comparison, the Commission should have been enlightened by the Veerashaiva Association, as respects the representatives of each caste/community in all the seven previous Cabinets and the present Cabinet.

11 to 15. The Commission is not concerned with the special philosophical teachings of any religion, nor is it interested, as a Commission, in knowing the philosophical and spiritual ideologies every religion claims. The Commission is of the opinion that fundamentals of all religions are almost identical. The Memorandum does not state what the philosophy of Veerashaivism was, and what it is to-day. However, the Commission is aware of the fact that the vocal elite and the powerful religious heads necessarily emerge from the advanced groups, and their masquerading in the principle of egalitarianism and the precept of universal brotherhood of man, or the virtues of undefined castelessness and classlessness are intended to silence the weaker sections who are suffering in the deep depths of inequality. Such masquerading in the principle of egalitarianism and such precepts without being practised are intended to kill the occasional urge by the weaker sections for a better treatment. The Commission knows, so far as the social aspect of Veerashaivism is concerned, that it involved itself in building a society on terms of equality. Veerashaivism attempted to bring about religious and social equality without the distinction of high and low on the ground of birth and without practising untouchability, but as admitted by other representatives sponsored by the Veerashaiva Association, there are different castes amongst Veerashaiva community and discrimination is made against the lower castes. Even so, the Memorandum itself has stated that there exist in the same community side-by-side various sections with varying degrees of backwardness—social, educational and economic. The Commission has not considered Lingayat community as a single caste nor is the Lingayat community given the status of a caste. While there are some amongst Lingayat community who assert that they are a section of Hindus, there are others who say that they are non-Hindus. While there are some who say that they accept the Vedas as their scriptures, there are others amongst the Lingayat community who disrespect the Hindu scriptures. While there are some who say that Basaveswara founded the Veerashaiva religion, there are others amongst the Lingayats who trace their origin to antiquity. The Commission, however, does not wish to enter into such controversies, when the Lingayats themselves are not unanimous on those aspects.

There are some amongst Lingayats claiming the status of Brahmins, some the status of Kshatriyas and some degrading themselves to the status of Shudras.

M. S. Patil, a member of the Mysore Backward Classes Committee, (1961) in his note and G. C. Shettar, or for that matter everyone who deposed before the Commission, stated that there are different sections in the Veerashaiva community, and some admitted the practice of treating certain sections as high or low.

Vokkaligas:

The Mysore Backward Classes Committee (1961) headed by R. Nagana Gowda had considered Bhunts to be a separate and distinct caste from the Vokkaligas. But when the report of the Committee came to be considered by the Government, Bhunts were treated as a section of the Vokkaliga community without assigning any reasons. Although the Nagana Gowda Committee had not assigned any reason for treating Bhunts as a distinct caste, their conclusion was correct. The reasons are: first, Bhunts are to be found only in the district of South Kanara (Mangalore) and a few in the district of North Kanara (Karwar) which were parts of the then British Provinces of Madras and Bombay respectively. The Vokkaligas are found mostly in the Princely State of Old Mysore. It was only after the reorganization of the State in November 1956, that, among others, certain areas of South Kanara District and North Kanara District were integrated with the New State of Mysore, now Karnataka. Bhunts are not to be found in the Old Mysore area nor are the Vokkaligas in the integrated area of South Kanara and North Kanara Districts. It is a fact that both Vokkaligas of Old Mysore area and Bhunts of South Kanara District are traditionally the agricultural communities. It appears, on the sole ground that Bhunts are an agricultural community, as are the Vokkaligas, the Government in 1961 disagreeing with the unanimous opinion of the Nagana Gowda Committee, included them amongst the Vokkaliga community. But, we are of the opinion that on the sole ground that a particular caste or a community has a traditional occupation similar to that of some other caste or community, one caste cannot be treated as belonging to the other one. For instance, Thigalars are agriculturists, but they are not included with the Vokkaligas. Bhunts have a long tradition of education, unlike the Vokkaligas. Secondly, Bhunts are geographically separated from the Vokkaligas. Thirdly, Bhunts' language spoken at home is 'Tulu', whereas that of Vokkaligas is Kannada, and in some areas, Telugu. Fourthly, Bhunts have altogether a different culture and style of life from that of the Vokkaligas. Fifthly, the most important reason is that while the Vokkaligas are governed by the Hindu Law in the matter of succession, inheritence, marriage, divorce etc., Bhunts are governed by a somewhat peculiar special law called "Aliyasanthana". Both these castes are antagonistic

to each other in the matter of inheritance, in this, that while the Vokkaligas are governed by a system of inheritance as are the other Hindu castes, in which descent is traced in the male line, Bhunts are governed by a system of inheritance in which descent is traced in the female line. Sixthly, the origin of Bhunts is also different from that of Vokkaligas. Bhunts claim that they were formerly a military class, whereas the Vokkaligas do not. Seventhly, the names of exogamous groups or septs have absolutely no similarity between the two.

And above all, not one person from Bhunt caste appeared before the Commission to say that Bhunts are a section of Vokkaligas. We, therefore, categorise the Bhunts separately, they being a distinct caste, as was done by the Nagana Gowda Committee.

Women :

A faint suggestion has been made by no less a person than the former Chief Justice of India, K. Subba Rao, that women, in general, could be considered as a backward class. Before we advert to the constitutional provision, it would not be irrelevant on our part to say that K. Subba Rao, as a Judge (on the Bench both of the Andhra Pradesh High Court and of the Supreme Court) came to deliver at least six judgments on backward classes, as could be seen from the reported cases. In none of those cases K. Subba Rao referred to women being considered as a backward class. However, after his retirement as Chief Justice of India in 1967, for the first time in September 1973, at a Jurists' Seminar, he came to suggest that women could also be treated as a backward class.

A class of citizens to be termed backward under Article 15(4) or 16(4) is not confined to men only. The expression 'classes of citizens' covers men and women together.

The problems associated with men and women together of backward classes contemplated under Article 15(4) and 16(4) are different from those associated with women, as such, of all classes. The founding fathers of the Constitution having realised the peculiar laws, customs and taboos to which women of different castes and communities have been subjected, made a provision by Article 15 (3) that special provision for women in general could be made. The 'juxtaposition' of Article 15(3) and 15(4), a rule propounded by K. Subba Rao in Chitralekha case, makes clear that women in general are to be treated separately for certain purposes. Our Commission is appointed under Article 15(4) and 16(4), but not under Article 15(3). If women in general also come within the meaning of the term backward classes, there was no need for the Constitution makers to provide separately for women and separately for backward classes.

There are peculiar problems associated with women in general. Our Commission could only suggest to the Government for appointing a Commission under Article 15(3) exclusively for women for studying their problems and to make recommendations as to the steps that should be taken for ameliorating the difficulties under which they labour on grounds of their religion, race and caste, besides the common ground of their sex.

We are of the opinion that, among other measures, the securing of a uniform civil code will liberate women from the bondage of legal and customary restrictions and social taboos. The enlightened members of all communities should strive for such a Civil Code.

CHAPTER XXIV

INTERPRETATION OF SOCIO-ECONOMIC SURVEY DATA

For want of historical information it cannot be answered as to the extent to which status summation existed in the past in Karnataka. We, therefore, undertook the task of collecting the relevant information by conducting the socio-economic survey in a comprehensive manner not done hitherto by any State. The material we collected is more than adequate for our purpose.

I. Caste and castelessness:

Caste- and community-units are based on sectarian, denominational and religious affiliations sharing certain common interests. They are particularistic in their character as opposed to politcal parties, trade unions and clubs which are universalistic groups. Though outwardly people profess to have nothing to do with religion and caste, they have their ties of friendship and marriage in their own community or caste. Members of the same political party or trade union or club belonging to a particular community or caste secretly enter into conspiracy against those who do not belong to their community or caste, and look upon them with suspicion, distrust and hatred. Powerful politicians and men of eminence are moved by appeals to caste and community. They equate the interests and "destiny" of their caste or community with the interests and "destiny" of the State and the nation. Indeed, men have achieved powerful positions and reached high eminence by making caste and communal appeals to the masses.

II. Caste and its aspects:

3. 'Caste system', according to the dictionary of Sociology [1], 'is rooted in the religious order and may be thought of as a hierarchy of hereditary, endogamous, occupational groups with positions fixed and mobility barred by ritual distances between each caste . ..... The system existed for some 3000 years and continues today despite many attempts to get rid of some of its restrictions. It is essentially connected with Hinduism'.

4. Some Indian sociologists have produced treatises on castes, highlighting certain aspects that have been changing by emphasising instances of some individuals from the lower and the untouchable castes occupying political positions, and entering professions like law, engineering, medicine and public services including the judiciary, which were, and are, dominated by the upper castes. They have also referred to some lower caste people living in houses with tiled roofs

instead of in thatched huts, sending their children to primary schools instead of to the fields to work as labourers or as street sweepers and scavengers, thus propounding the theory of 'Sanskritization'.

5. These sociologists stop at that. They do not lay emphasis on, or refer to the great heights the higher caste people have reached. Higher caste people have started living in buildings with ultra-modern amenities, sending their children to far off places, even to foreign countries, for higher and specialised studies, occupying highest positions in public services, owning big industries and moving in cars and aeroplanes.

6. These sociologists have not referred to the absence of instances of higher caste people taking to scavenging or street-sweeping, or shoe-making or carrying the dead animals, lest their theory of "changing caste aspects", or the theory of individual mobility, or the dignity of labour they intend propounding should fail. They have omitted to mention the absence of even a single person of the top castes engaged in the actual act of stone-cutting, wood-cutting, mud-carrying, etc., in the construction of roads, buildings, bridges and dams.

7. Adult franchise and spread of education, coupled with discriminatory protective measures in favour of certain castes, have, no doubt, given scope for the lower caste individuals to enter political fields, democratic institutions and the new professions. It is to be noted here that the lower castes in politics, in democratic institutions and in the new professions are ineffective and they are looked down upon as low and inferior by their higher caste colleagues. Even a High Court judge of a low caste is subjected to all sorts of insinuation and humiliation by the higher caste Hindu judges, as his uneducated village brother is subjected to by the higher caste Hindu villagers. Caste had always been important in the old traditional Hindu society, and it has been equally important in the modern Hindu society. Caste-groups have remained with us, and one carries his caste identity wherever he goes—to school, to college, into politics, into professions including the judiciary. Only the form or method of discrimination varies from profession to profession, but the fact is that caste operates everywhere, and operating itself in a variety of forms is its true property.

8. Again, some sociologists and intellectuals quote isolated instances where some low caste people were not discriminated against, in support of their theory of "disappearance of caste". To them our answer is that the test to know whether caste has disappeared or not is not the absence of caste operation in some isolated instances, under certain compelling circumstances, but the test to prove its presence is in what manner, in how many areas and how many times

it operates and with what force. In the writings and speeches of eminent personalities on the virtues of "castelessness" we notice their casteism. A person, after successfully managing to reach and occupy an exalted position through his caste-ladder, starts lecturing on the evils of caste only to pass himself off as the one being elected, selected, or nominated, as the case may be, only on the ground of his merit to occupy that poistion. Here, we notice caste expressing itself in the guise of 'castelessness' and in the form of self-declared 'merit'. Such persons decry caste in disgust when their position is threatened, or when benefits tend to decrease or stop, or become jealous when others also similarly use their caste-ladder for achieving something. Here caste expression is in the form of 'disgust' 'jealousy' and 'rivalry' when others also try to become equally communal. Such persons become so blind as not to realise that others notice their communalism.

9. Such a person condemns caste on the real or supposed ground that other castes were, at times, a hindrance to his progress, but he is insensitive to admit that he himself was, on many occasions, a hindrance to others on the ground of his caste.

III. Castes—social blocks and their structure:

10. Ethnic diversity is a unique characteristic of Indian society, though those differences as such do not appear to have contributed to social tensions. The reason appears to be that caste or community is a social category based, generally speaking, not on racial differentiation. An individual, irrespective of his ethnic or physical characteristics, identifies himself as a member of a caste or community on the sole ground of his birth in it. He believes that he shares common blood and common ancestry with the other members of his caste or community. Indian society is characteristically segmented into various culturally and socially identifiable communities and castes. They are not distributed evenly in all the areas of the State. Some have their dense population in some areas of the State while they are totally absent in other areas. The rule of endogamy has contributed to the preservation of cultural and social identity of each caste. The unit of endogamy is either a caste or a sub-caste, but, of late, the unit is widening to cover a group of sub-castes or a group of castes, provided they are socially, culturally and economically of equal or nearly equal status. For instance, the unit of endogamy amongst Vokkaligas has widened to include in it a number of castes and sub-castes of to-day, which are believed to belong to a single undifferentiated original peasant group.

11. Veerashaivas (Lingayats) claim to belong to a religion of their own, though legally they are considered as a Hindu denomination. It originated by uniting certain caste-blocks, and has grown by adding new ones which did not accept the principle of status or rank ascribed by birth. The unit of endogamy amongst veerashaivas

in principle, is their denominational community, but in the process of expanding itself into a still larger community, it has allowed, perhaps, the new entrants to retain their autonomy and identity. That appears to be the reason why we find separate religious heads and monasteries of each section widespread in the State. The cases of those caste-units who have not yet been wholly assimilated into, or are half-way to, the Veerashaiva community but who could be readily identified and whose population could be ascertained have been considered separately. Such cases include the Ganigas (oil pressers), the Kumbaras (potters), the Kshowrikas (barbers), the Agasas (washermen), some Neygis (weavers), etc.

12. Muslims and Christians have been pursuing their religious faiths, though the majority of them were Hindus. The movements to create a casteless society ended themselves into communities with caste-like groups. Veerashaivas of our State provide the best example of this. Since Muslims and Christians are living in close economic and political interdependence with the Hindus, they have imbibed a variety of cultural forms from the Hindus. Hierarchically compartmentalised traditional Hindu society allows any community or group without the properties of caste to function side by side with Hindu castes as part of the Indian society. A group may become a part of Hindu society provided it accepts the principle of caste, and yet retain its original individual identity. So also, when it goes out of Hindu society, it could continue to retain its identity, but it looses its castes properties.

IV. Indian Constitution, caste and class:

13. That 'class' is synonimous with 'caste' is supported by Ketkar,[2] who says that 'Classes are converted into castes by becoming endogamous', by Ross,[3] who emphatically states that class burdens into caste when the jealous upper-class resists or retards the admission of commoners, however great their merit or wealth', and by Namboodiripad,[4] who asserts that 'there is a certain amount of intermingling between the two factors, class and caste. In the pre-capitalist society, such as ours, caste is the main form through which class manifests itself'.

14. Similarly, Andre Beteille,[5] commenting on the Supreme Court Judgment in Balaji case delivered by Gajendragadkar J., refers to low status castes as backward classes. Marc Galanter[6] interprets the judgment of Gajendragadkar J., in Balaji case equating 'class' with 'caste'. And Gajendragadkar J.[7] himself when he became the Chairman of the Commission of Inquiry appointed by the Jammu and Kashmir Government suggests in his Report that the criterion of backwardness, so far as Hindus are concerned, is caste.

15. Ambedkar, the chief architect of our Constitution and who supported in Parliament the First Constitution Amendment

in 1951 for insertion of clause 4 in Article 15, gave evidence before the President appointed Backward Classes Commission under the Chairmanship of Kaka Kalelkar. To a question as to what constitutes backwardness, Ambedkar[8] states :

> " Supposing I am left in the situation to do something for the betterment and advancement of India, I would look at the *social status of the community*. Here in India, people have got different status—some are in the highest positions, some in the middle, some are still less and some are at the bottom. Our problem is not so much as to distribute wealth in order to make everybody happy ; our problem is that different status should disappear. It can disappear *only by education,* when all communities are brought to the *same level* in the matter of education, *not everybody but the community as such.*
>
> (**Note :** In his evidence before the Commission Ambedkar refers to *caste* as *community*, and in the Draft Constitution and the debates in the Constituent Assembly the two words are used as interchangeable. The Bombay Prevention of Excommunication Act, 1949, defines the word 'community' as a group of people who by birth, conversion, or the performance of any religious rite are regarded as belonging to the same religion or religious creed, and it includes a caste or sub-caste.)

V. Caste and occupation :

16. Though Brahmins occupy the highest position in the traditional scale of social honour, there are others who ocupy the highest positions in different sectors or areas. Land, in varying extents, is owned by a majority of communities, though it is concentrated in the hands of a few communities. Some of the Scheduled Castes own lands more than some of the non-Scheduled communities, and some communities do not own any land at all. Agriculture seems to have been the only occupation for majority of the communities, and so too agricultural labour. Potters , carpenters, black-smiths, barbers, washermen, shepherds, weavers etc., are occupational as well as hereditary communities, and they too are attracted by agriculture. Again, some members of the traditionally known priestly classes and peasant communities have taken to trade, commerce and industry. Though the relationship between traditional occupation and caste is diminishing amongst some groups a broad relationship between the two still continues to exist. In respect of some extremely low occupations such as scavenging, street sweeping, shoe-making, hair-cutting and shaving and laundering, the traditional relationship between occupation and caste has not broken down to any degree. Gradation of castes in the hierarchy has relation to the hierarchical gradation of occupations. Traditional value given to occupations and professions is not obliterated. Occupations which are conventionally known to be unclean and polluting and those that are onerous, unremunerative and involving

manual labour are considered inferior, and are avoided by the clean and superior castes.

17. British rule gave scope for a variety of professions and occupations to emerge. Literacy was the monopoly of certain upper castes in the traditional system, and they soon got English education. The newly emerged professions like civil service, medicine, law, engineering etc., were monopolised by a few upper castes. No doubt, now-a-days, certain individuals of other castes including untouchable castes are taking to English and higher education, and through it to new professions, but it is because of the Government policy of encouragement in the form of economic aid and 'reservation'. Such occupations are only urban biased, and the large mass of people still follow their traditional occupations.

18. As long as name calls to mind a particular occupation, so long will it influence the position of the individual who goes into other work....It is a factor which varies with the size of the gap between the traditional and the actual occupation. Thus, not much comment would be made if a tanner becomes a day-labourer but there would be considerable influence from his traditional occupation if he went into Government service.[9]

19. The material our Commission has collected indicates that there is sufficient relationship between caste-status and occupational-status in our State, although occupational opportunities have tended to increase and although certain aspects of caste are changing. Even to-day the agricultural, service and low castes have high concentration in the unskilled occupations. The high-status castes are to be found in professional and managerial occupations in greater numbers.

20. The most distinguishing characteristic of the caste system is heredity and traditional occupation. The broad division of castes is based on occupations as ritually clean (which do not involve manual labour and soiling of hands) and unclean (involving manual labour). Caste and occupation are closely associated. The traditional scheme of social organization which associated caste with occupation has been the fundamental basis of our social order, and the belief is that if the said social order is disturbed it would disturb social tranquility. *Manu's* warning that 'the King should carefully *compel* Vyshyas and the Shudras to perform the work prescribed for them; for if these two castes swerved from their duties they would throw this whole world into confusion",[10] is believed even to this day by orthodox Hindus. Occupations have been graded on the basis of the ritual status of the occupations. Many castes derive their names from their traditional occupations. For instance, washermen, barbers, fishermen, shephards, cobblers, tailors, carpenters, blacksmiths, gold-smiths, and peasants have

derived their names on the basis of their traditional occupations. Inherent in this system is occupational immobility. Indian stratification based on occupational immobility has become rigid and stagnant, although traditionally there have been instances of individuals changing their traditional occupations. The only prohibition was, as observed by Ghurye, " no caste would allow its members to take to any calling which was *degrading,* like toddy tapping or curing hides ".[11]

21. Instances of individuals of untouchable castes giving up their traditional occupation like curing hides, and becoming agricultural labourers or farm servants have been there. Some of the traditional occupations have become obsolete, and their members necessarily had to take to other occupations. Similarly, in course of time, as a result of industrialization and mechanization some new occupations grew up, and people from different castes had to take to those new occupations. The status of such groups in the traditional hierarchy cannot be determined with accuracy in the traditional concept. However, from this it would be an unrealistic approach to generalise that the traditional hereditary status ascribed to castes has no relation after change of occupation, though there is a relationship between the hierarchy of castes and the hirearchy of occupations. Although some individuals from low status castes have taken to some higher occupations, the higher caste individuals have not taken to lowest occupations. The validity of a caste continuing in its traditional occupation or otherwise is not dependent upon some of its individual members following other occupations, but upon the large number of persons of that caste being still engaged in that occupation. The evidence collected by us shows that traditional low status castes have continued with their traditional low status occupations and the high status castes have taken largely to new non-traditional professions and occupations. No caste can be said, at any point of time, to be following traditional occupation hundred per cent. And the greater numbers following their traditional occupations are of the peasant, the artisan and service castes, including the untouchable castes. The picture is that even where there is some tendency of change from traditional to non-traditional occupation, the low castes continue to follow their traditional occupations. The reason is that poverty, absence of education, and prevailing social taboos work against them in changing over to non-traditional occupations. However, where the change from traditional to non-traditional occupation or from traditionally low to traditionally high occupation is noticed the status of the changed occupation is more or less of the status of the previous occupation.

Peasants are given a low ranking because of the low status society has given to agriculture. Professions and occupations not involving manual labour stand out high in desirability and popular regard, and they have been given high prestige.

VI. Castes and job opportunities:

22. Backward classes, besides being economically poor, are drawn from the rural areas, and their children do not have the motivation, training and ability to compete with the children of the advanced sections. Available evidence shows that they are deleteriously placed with respect to pre-training factor. Few children attend the primary school, fewer attend the secondary school and much less, and in some cases rather none, attend the college. They register comparatively a lower rate of competition on account of lack of motivation, derived in part from their rural background and in part from their occupational and economic backwardness. Their children do not emerge from the High Schools in the required numbers, nor do they have intellectual capacity on par with that of the children of the advanced sections. They are not to be found in private employment, because they are being discriminated against. The backward classes are not getting as good jobs with as high salaries as the advanced communities of the same level are getting. The advanced sections show "weakness of clan and extended family feeling", and they are quicker to bring in others of their sections in the jobs. The exeperience of the backward classes has been frustrating, and personality damage more extensive. The backward classes with rural and peasant background have little knowledge of what value or use education might be. The parents are interested in getting the children out of school at an early age and put them on their traditional work. Their children are married as soon as possible. Their background discourages further education. The values those castes hold about education are not of the standard held by the upper-castes. The parents of the advanced communities continually emphasise to their children the importance of education as a means of getting ahead in society.

VII. Caste, education and occupation:

23. Our constitutional and national policy is to abolish disabilities and distinctions based on caste, but not to abolish *castes* as such. There are different layers of advancement amongst castes, and so the constitutional and national policy has been differential treatment to different castes, rather than furthering caste stratification. Constitution intends to remove the inherent system of acute inequalities between castes. Unfortunately, the educational policy has followed the traditional trend. Higher castes have increased their chances of education. Higher castes have over-representation in higher education and the lower castes have either under-representation or no representation at all. The number of students from the higher castes in higher education is increasing year by year. The educational authorities who formulate the system and the policies of education have continued to enhance the chances of higher castes for higher education. As Russia has done, India also has instituted a quota system which tries to ensure a fairer balance between

different castes, than would be the case if qualification and merit alone were considered. Though the Russian practice of allotment of quota to certain ethnic communities has been the subject of criticism, Russia has considered it necessary, if recruitment of the under-developed ethnic communities in services is to be improved.

24. More prestigious educational institutions and universities are located in our State in areas or districts where certain advanced castes have preponderance of their population. The advanced castes have superior access to educational, economic and political power, and the advanced castes take important decisions affecting the life of the entire society.

25. Occupational structures to have the democratic characteristic should provide entry of all castes and communities to the leading and intelliectual professions and occupations. In a democratic occupational structure one expects the distribution of all castes in all professions and occupations. Occupational mobility should provide avenues not only for upward movement but also for downward movement so that no caste or no group of castes should monopolise any particular profession or occupation, whether high or low. Children of the castes following non-manual occupations are found pursuing studies for employment in non-manual occupations. Castes possessing higher professional positions have high chances of obtaining higher professional and non-manual occupations. Aspirations of the higher castes are for educating their children for higher occupations. But the agricultural, artisan and service castes are doing worse as could be seen from the number of students passing at the examinations in I Class, II Class and the III Class. The share of the children from the agricultural and rural background not only in the general passes but also in their performance in I Class and II Class is very low compared with the higher castes. The aspirations of the higher castes is reflected in the large number of students taking High School education, and their actual achievement at the examination. Whereas, the aspirations of the agricultural, artisan and service castes, particularly those residing in rural areas are very low, as is evident from the number of drop outs from the Vernacular VII Standard to S.S.L.C. The picture would have been still alarming if we had collected statistics of students at the University level. The disparity is to be found not only in the unequal chances of securing higher percentage of marks, but it is to be found widely prevalent in medicine and engineering courses of study. Admission of students from different castes to medical courses (*vide* Statement 12 Volume 11) would give an indication as to how different castes must have been represented in the engineering, law, science, technical and teacher training courses. Such disparties could also be found in cultural courses of studies such as music, arts etc., and journalism. The cultural background which the higher castes provide is an advantage to their children to

have higher and prestigious education. The upper castes with higher professions and occupations could change their occupations, but the change is horizontal or upward and mainly in the direction of scientific, administrative and technological employment. In theory, the school and college structures appear to be egalitarian seeking to raise children of all castes up to a common average standard, but there is considerable difference in the attainment of different castes. The success and attainment at the school and in the college is correlated with the social and economic positions of the castes. Children of the castes with higher income and higher educational attainment have done better than the children of the lower castes. The higher professions and non-traditional occupations have become stratified. Leaders in the mass-media such as newspapers and other journals are also from the upper castes. To summarise, children from the upper castes and particularly from urban areas following non-traditional and non-manual occupations have not only better access to cultural facilities but also to higher aspirations. The political elite may stress equality of educational opportunities but the educational system itself is producing inequality between different castes. The lower castes are frustrated by the present educational system which encourages better educational performance in the higher castes.

VIII. Caste and income :

26. Table No. 38 Volume No. IV refers to various castes and their income. We should interpret this Table with an element of caution. The illiterate farmers and rural people do not keep an account of their exact income in terms of rupees. However, our purpose is not to determine with exactitude the income level of each caste, but to examine generally which castes on the whole are better off economically in a relative sense. The data on income show a known patern, observed by many, that castes with low land-holding, castes that are following unremunerative, manual and low occupations have low economic income. The other data on socio-economic studies confirm the pattern observed in Table No. 38 Volume IV relating to caste income. A correlation is available from Table Nos. 32, 32 and33 Volume IV which deal with ownership of cattle, articles and other goods. The data on income have been accepted by us as correct. The said Table shows lower the status of a caste, lower is the income level.

IX. Income differentials :

27. Modern sociologists consider income to be an important index of social standing. Distribution of income amongst different castes and communities indicates the way in which these groups apportion the social surplus of a society. Egalitarian thinkers consider an equal distribution of income as an essential characteristic of a just society. In an unjust and unequal society such

as ours, differences in income are wide. There is a hierarchy of styles of life, there is a hierarchy of differential income and there is a hierarchy of consumption of goods. The higher income castes have the benefit of using cars and other vehicles, good houses with modern facilities and so on. Castes with higher income are in a more advantageous situation in providing higher education to their children, their expenses on education and entertainment are extremely high. So also their expenditure on newspapers, periodicals, books and cinemas. They eat better kind of food, spend more holidays, utilise more house-hold appliances etc. Housing is also differentiated by caste statuses; higher the caste status the better the housing.

X. Caste and material possessions :

28. Table Nos. 33 and 34 deal with possession of articles such as radio, transistor, bicycle, scooter, etc., which show that some of the low castes own nothing. The higher the status of a caste the greater is the number of items owned and possessed.

29. Urbanization and exposure to mass-media communication are the other indicators of social advancement. Some of the untouchable castes, like sweepers and scavengers, are more urbanized than the non-Scheduled Castes, but the most urbanized are the members of the higher castes. Brahmins, Christians and Muslims are some of the communities who form the largest proportion in the urban population and they are better educated, and have taken to new professions. Though India is a poor country urban areas consist of developed castes and communities. Urban areas provide greater scope for education, for a number of non-traditional occupations and for general advancement. Though some individual members of the lower status castes living in urban areas show higher level of socio-economic status compared to their brothers in rural areas, they occupy low status compared to the socio-economic status of the higher castes living in urban areas.

30. Anil Bhatt writes " the gap between the higher status castes and the lower status castes is greater in urban than in rural areas ".[12] The gap or the distance in ritual status between the Brahmin caste and the castes immediately below it has been very great in Karnataka, unlike in North Indian States where the Banias of Gujarat, Kayasthas and Baidyas of Bengal, Guptas and Khatris of Uttar Pradesh are below Brahmins in ritual status. Nevertheless their ranking is not far below in economic and political status. In Bengal, for instance, the Kayasthas and Baidyas have overtaken the Brahmins in socio-economic sphere. "The 1901 Census of India found that in the socio-economic positions the Brahmins were headed by other high castes in the regions of Bengal, Bihar and Bombay but in the Madras Province they were in the top."[13] "The Brahmins of South India, not only enjoyed supremacy in the ritual but also

in economic and political spheres".[14] This is one of the reasons why we find the population of the Backward Classes including Scheduled Castes and Scheduled Tribes in Karnataka is about 60 per ecnt of the State population. The Mysore High Court observed in 1963 in Viswanatha case that the *majority* people of Karnataka were socially and educationally backward. The overall socio-economic statuses of the castes show that the inequalities between castes is high in Karnataka. Anil Bhatt writes that in the State of Andhra Pradesh " the gap between the top-caste Brahmins and the castes next to them, Kammas and Reddys, is quite big.... The gap between them, is bigger in ritual status and also in socio-economic status".[15]

31. Karnataka State, being surrounding by Tamil Nadu and Andhra Pradesh in South India, also presents a similar picture. Though certain peasant communities like Lingayats and Vokkaligas are below Brahmins, the gap between them is very wide and the Brahmins are concentrated at the top. In Statement No. 6 (also in Statement No. 7) Volume II of four Report we find the Darzis (tailors), the Devadigas (the pipers), the Devangas, Patwekars and Neygis (weavers), and the Idigas (toddy tappers) who are far below Brahmins have higher levels of education than the Vokkaligas (the peasants).

32. "In Northern States like Gujarat we find that the non-Brahmin castes like Banias and Sonis are highly concentrated at the top" (16). "The Patidars also show a notable exception to the 'higher the caste higher the socio-economic status' pattern. The Patidars were traditionally regarded as Shudras in Gujarat and were once known as Kanbis, a name indicative of their low status. However, during the last few decades, they have become upwardly mobile. They are not commonly known as Kanbis to-day but as Patels....In modern Gujarat the Patidars are in the fore-front socially and politically.....Their socio-economic status levels are higher than the Rajaputs and almost as high as Brahmins."[17] For this reason, in the determination of *social* backwardness, we have not gone by the principle of caste, *i.e.*, by the principle of ritual status. The other reason for giving up the traditional approach of deciding social backwardness on the basis of caste is, as rightly stated by M. N. Srinivas[18] and other sociologists that "there is great doubt as to the exact place occupied by any particular caste. Its members claim a high place, while others deny this claim. While the uncertainty is specifically marked in the middle regions, it is not entirely absent even at the extremes. Thus, there is a Brahmin group in the South from which even the Harijans do not accept water, let alone cooked food".

XI. Caste and claim for higher status:

33. The Mysore Gazetteer,[10] compiled for Government, mentions revealing facts found at the 1921 Census that some of the castes

claim higher status for themselves. The Satanis who are priests and temple servants claim the status of Brahmins describing themselves as 'Venkataputra Brahmins'. The barbers wanted their caste name 'Nayinda' to be changed to 'Nayanaja Kshatriya'. Kunchtigas, a section of the Vokkaligas, desired to be separated from the Vokkaligas. The Devangas, a section of the weavers who were clubbed with the other weavers' community, wanted to be shown stparately from the Neygis. The Panchalas or the Viswakarmas, an artisan caste, wanted to be grouped as Viswa Brahmins. Lingayats desired that they should be shown as Veerashaivas under religion, and Veerashaiva Brahmins, Lingadhari, Veerashaiva Kshatriya etc., under castes. Holeyas, an untouchable caste, wished to be described as Adi-dravidas, and Kurubas as Arya-Kshatriyas. Similar are the claims put forward before us by some of those communities and others as well.

XII. Caste and living conditions :

34. The backward classes, whether they be agriculturists, agricultural workers or artisans, are living in incredibly primitive conditions. Sanitary conditions are also primitive. Malnutrition has produced a stunting of growth, and susceptibility to diseases. All this shows a grinding poverty that could scarcely be seen with the advanced communities. Most of the backward classes population is unemployed and under-employed, and they suffer from hunger.

XIII. Town and village :

35. A casual observer may not make a distinction between a worker on the farm and a worker in the industry. Sparsely populated rural areas are given unequal facilities compared to those who live in villages. Provision of social and cultural services, as is made in towns and cities, is not economically feasible to be made in the rural areas. The tendency is to concentrate social, educational and cultural services in urban places. Urban places have thus become centres of cultural, educational and social activities. Housing, communications, cinemas and dramatical theatres, shops, hospitals, establishments of higher education and industries—big and small—come to be established in urban places. The rural people have become heavily dependent on urban people. The standard of living in the villages is very much lower than it is in the cities.

36. In the rural areas very large proportion of labour is occupied in agricultural and other manual work and conversely a very low proportion is occupied in non-manual work. In the rural areas educational standards are far lower and social services worse than in cities. For want of adequate number of educational institutions in the rural areas, besides low standard of education, the cultural development of those people is low. People residing in urban areas have all the civic amenities, and they subscribe to newspapers and journals, and posses radios and transistors besides

vehicles. Village occupational structure deserves to be levelled up by improving general education and social facilities to remove the inequalities between rural and urban areas. The executive, administrative and technical personnel as also the professionals like the lawyers, doctors and merchants occupy a superior position with higher standard of living compared to the manual workers. The occupational structure has given rise to superior and inferior social statuses in terms of social worth. Efforts should be made for the increase of general cultural and educational levels of all classes of people. The position of the rural people and the manual labourers should be improved by providing more facilities in education and by equalising the income.

Though literacy is intended to be made universal by the introduction of free and compulsory primary education, only a few relatively privileged castes are receiving not only primary education but also higher education.

37. The urban population in the State is very small in relation to the rural population. The smallness of the urban population could be ascribed to want of diversity in the occupations of the people, agriculture being to this day the main occupation. The history of our country has shown that it does not favour the growth of towns, except the seats of Government like the capital, the district and some taluk places.

38. No doubt, of late, industries are growing up in the State but they are mostly concentrated in the cities. "Hindus in the State take less readily to towns than Jains, Mohamedans or Christians. The bulk of the Christian community lives in towns. For nearly 1000 persons in the State 121 Hindus, 315 Jains, 403 Mohamedans and 740 Christians live in towns. In other words, 6 times as many Christians, 3½ times as many Mohamedans and 2½ times as many Jains as Hindus live in towns".[20] Amongst the Hindus the Brahmins have a greater proportion in towns and cities.

"... the Vokkaliga, Lingayat, Kuruba, Beda, and Madiga castes are mainly rural; the Holeya is equally rural, except that a goodly number of this caste is found in Kolar Gold Fields area and in the Civil and Military Station, Bangalore; and the Brahmin is more largely urban than the others, nearly a fifth of this caste living in the cities of Bangalore and Mysore".[21] Similarly, Besta, Golla, Vodda, Banajiga, Panchala and Uppara castes are mainly rural. So too are the Agasa, Idiga and Tigala castes. The State Gazetteer, however, states that Kumbara, Nayinda, Ganiga, Devanga and Satani are somewhat rural communities. Darzi, Kshatriya and Mudaliar are urban communities.

The occupations of the castes of which an appreciable part is in the cities is found to be of an urban character.[22]

39. Speaking of education, the Mysore Gazetteer [23] states that the Hindus had 76 literates out of every 1000 persons of the age of 5 years and over ; the Mohamedans 158 and the Christians 411 ; the Jains 203, the Buddhists 310, the Sikhs 405 and the Parsis 744.

" Literacy is closely connected with occupation and those communities are more literate which require a knowledge of writing and reading. To some extent also, it is dependent on the existence of facilities for learning. Whether there is need for it or not ..... Mohamedans mostly follow urban occupations which require a knowledge of letters, apart from religious necessities. They have, therefore, twice the Hindu proportion of literates amongst them. The Christian community is even more urban and has, therefore, even a larger need for letters and better opportunities of learning. Further, the facilities afforded to them by Missions in the matter of education make them easily the most literate in the State. The high literacy of the Jains is explained by the fact that they are largely engaged in trade and industry, in which a knowledge of letters is necessary. They have, besides, a traditional love for letters which drives their boys to schools ".[24]

40. As regards the literary of the Hindu castes, Brahmin, Vaisya, Kshatriya, Neygi, Panchala, Banajiga, Lingayat and Maratha castes had 100 or more literate out of 1000 population of their respective castes, and Vokkaligas had 39 literate out of 1000. Ganigas show 12 and Devanga 4 literates per thousand.

" The Holeya and Madiga form the large agricultural labour class and live largely in villages and are not in the reach of schools .....They show, therefore, the low proportions of literates. Of these two, the Madiga proportion is worse and is as low as the Animists and this is not to be wondered at seeing that his general position is an abject one, except that he is settled in the village and is not a wanderer like the normal Animist... [25]

41. Speaking about female literacy, the Gazeteer says " the progressive communities lead ; Jews, Brahmos and Parsis come first. The Christians come next, a long way after come Sikhs and Buddhists ; very near them come the Jains and Mohamedans ; and a long way below them come the Hindus." [26]

42. The result of our discarding the principle of caste is that we have been able to determine the social backwardness of sections of priestly class like the Satanis, sections of the traditional Kshatriya (warrior) class like the Rajputs and the Arasus, and sections of Lingayats (stated elsewhere in this Chapter) who do not have castes in the conventional sense known to Hindu society, as also of Muslim community. The sections of Muslim community treated by us as socially backward are, Chapparband, Shikkaligar, Kanjar, Darveshi

and Garudi who are nomadic, semi-nomadic and ex-criminal tribes.[27]

43. We have gone by indicators such as economic and occupational backwardness of each caste in determining its *social* backwarness. Since, in Karnataka, the gap between the Brahmin caste, which is at the top in the ritual and sufficiently high in socio-economic status, and those that are immediately below it being very wide, the social and economic backwardness is to be found in a large number of castes comprising a majority population of the Hindus.

XIV. Caste and value of money:

44. Besides the traditional distinctions based on caste, poverty with the castes specified by us as backward classes, is a matter-of-course. The large majority of people of each of these castes is living either in rural areas, and in isolated or segregated areas. There is almost complete absence of those castes in trade, commerce and industry. The advanced communities have professions, trade, commerce and industry, small or big, as their occupation, and they have access to greater economic resources. They have learnt the importance of money and have developed skills which are of importance in the present economy. Those castes have created jobs for their kith and kin. The backward classes have no experience with money, and they have not developed any skill in planning and foresight. Amongst the backward classes there are no perceivable changes in occupations and they are still following their traditional occupations such as agriculture, carpentry, smithy, menial service and agricultural labour.

XV. Caste and dwellings:

45. The habitation of the backward classes being rural, secluded and segregated, their backwardness is identified with the backwardness of rural India. The dwellings in rural areas, particularly of the backward classes, line on either side of the narrow path. Though their structures vary in style, they are rough, mud-roofed or tile-roofed sheds or huts. Majority of their dwellings comprise a single portion, or two partitions, serving for all the members of the family. Cattle are tied inside the dwellings, or very close to their dwellings, adding to the already prevailing insanitary conditions. They do not have furniture like chairs, sofa-sets, tables, cots, etc., unlike the advanced communities' houses. Radio or transistor sets, mirrors, etc., are being generally used by the advanced communities. The vessels the backward classes use are made of either clay or aluminium but the vessels the advanced communities use are of stainless steel or brass. Their dwellings are not spacious. They are mostly thatched low-roofed dwellings. Usually, each such dwelling house has only one door, or two doors, and the houses are dark inside with

scant provision for ventilation. If there is a river or a stream, generally, the villages are located near it. We found separate places meant for different communities to fetch water from the stream or the river. In villages where there is no supply of water from stream or river, wells are the only source. Here again, some wells are meant exclusively for certain communities.

46. Houses belonging to the backward classes are constructed with materials of inferior quality. They spread mats on the floor. An agriculturist's house is invariably a little long narrow room, nearly half of which is meant for the cattle, sheep, goats and fowls. The agricultural workers thatch their huts with various kinds of grass.

47. Different areas of the State have different climatic conditions, and though the dwelling houses are constructed to suit the conditions of the area, the houses of the backward classes are of the poorest type in any area. Their houses are not provided with latrines. They are built in haphazard manner without any planning and without reference to the convenience of the neighbours and the public. Doors and windows are of smaller size, and are kept low. Arrangements of outlet for the smoke to get out are not made in the kitchen. Floors are plastered with cow-dung, and the walls are not regularly white-washed. They are painted with locally available red-earth (Kemmannu). The doors have no hinges as such, but revolve round pivots. If there are two or more rooms in the dwelling house, they have no independent access but they are in a row one behind the other. Fodder and grain are stored inside the houses. The sullage and the refuse of the cattle collected are removed from the house in the morning.

48. In almost all the villages that we visited the residential pattern is based on caste. Houses of particular caste or community are found together. There are certain localities which have got caste and community names. The houses on either side of the bazaar usually belong to the advanced communities who are generally traders, petty merchants and hotel keepers. Agriculturists, agricultural labourers, artisans and service castes reside away from the bazaar, and some in their farm houses. Residential localities of the Scheduled Castes are invariably segregated from the villages. The streets are all *kutcha,* and no drainage arrangements are made. Dirty water flows from the residential houses through the streets, collecting in low spots where it stagnates emiting stinking smell. Houses of the low castes are in irregular clusters. Their houses do not have separate kitchens and separate bath-rooms. Stone slabs are placed at a corner of the kitchen for standing or sitting while taking bath. Water from the kitchen as well as from the place where the bath is taken is drained outside, and is collected in the soak-pits outside the house. Some of the houses which do not have separate soak-pits allow the water to flow to the streets. The houses are ill-ventilated.

Agriculturists stock the fodder required for the cattle inside the house near the *Godali* which serves as a place for the cattle to be stall-fed. Some portion inside the house is utilised for keeping agricultural implements and other produce. In the *Padasale*, however, some houses have openings in the ceiling to secure light and ventilation.

XVI. Dwellings in towns and cities:

49. During the last 60 to 70 years; towns and cities have greatly developed. In villages, houses generally belong to the occupants themselves. But in towns and cities the mapority of the houses are owned by landlords who generally belong to the advanced communities, and rented out to tenants. The houses occupied by the backward classes in towns and cities are generally small, insanitary dwellings. Their houses look similar to those in villages, viz., mud walls, cheap materials etc. The living areas of their houses are insufficient contributing to insanitary slums. The advanced communities live in better types of houses with the facility of furniture and radio sets. Their houses have separate kitchens and lavatories. The advanced communities generally have independent bunglows with open space and garden around. The accommodation consists of verandah, drawing room, a sitting room, two or three extra rooms to be used as bedrooms, guest room, study room etc. Generally, the walls are of stone or brick masonry with lime or cement mortar, and plastered with lime or cement mortar. The floors are paved with stone or concrete. The doors are panelled or glazed with brass fixtures. The rooms are generally colour-washed or distempered. Different colours are used for various rooms, the shade being generally light and not deep. The roof is covered either by Mangalore tiles or terraced in reinforced concrete. The drawing hall or the sitting room is generally provided with five or six cane or wooden or steel chairs and one or two easy-chairs, one big central table, two or three tea-poys, the floor being covered with carpet. The bed-room is provided with one or two wooden or iron bed-steads, a ward-robe and a dressing table with a mirror. Built-in cupboards, shelves and pegs are provided wherever necessary. The people of the advanced communities have one or two sofa-sets. The dining table is also used in the dining-hall. Many of the people belonging to advanced communities have formed Housing Societies, purchasing sufficient area of land in the outskirts of the town or city. Each member is being allotted one or more plots. They have constructed bunglows of modern design with out-houses for renting. Their houses are serviced with electricity and water-taps. By and large, the backward classes use kerosene oil, or home-made castor oil for their lamps, and fetch water from the public water-taps provided by the Municipality or the Corporation.

XVII. Caste and sex differentiation:

50. The role of women in to-day's society is changing significantly, particularly of the upper caste educated women. The

opportunities outside the traditional roles of wife, mother or daughter are increasing. Though our Constitution prohibits the State from making discrimination on the ground of sex, in practice, women are discriminated against and they are excluded from certain occupations. Attempts have been made in the past to free women from male domination. The best indicator of the changing position of women, particularly after Independence, is her access to education, professions and occupations hitherto reserved for men. We now find woman accounting to a certain degree of all professional emlpoyees including medical doctors, teachers, lawyers, economists and politicians. We also find women being employed in industrial establishments. But, women belonging to certain castes which are traditionally engaged in agriculture, service and low occupations still continue to be engaged either as actual cultivators or domestic servants or farm labourers, as the case may be. Low caste women have continued to work as day labourers in earth digging, stone cutting, wood-cutting, road formation, bund construction, weaving, street sweeping and scavenging. Although there is no doubt that the scheme of free and compulsory education has opened up opportunities for women to have primary education, as also higher education, women of the agricultural castes, artisan castes and service castes have still monopolised their traditional occupations. Farm workers in the rural areas are generally constituted, to a greater extent, by uneducated women belonging to the traditionally low castes. Besides the social taboos which aggravate inequalities between men and women, there are certain natural inequalities inherent in the evolution of man. "Differential expectations of women are passed on unconsciously during the period of child-hood socialisation". There are higher biological differences between men and women. No legal, social, political and economic change can alter the fact that women bear children. This has an implication for her responsibilities towards children and the home.

The urge for better treatment and facilities now made by certain women's organisations is intended to benefit the urban educated higher-caste *elite* women.

XVIII. Caste and education:

51. India is one of the less literate societies in the world. One of the main reasons why it remained a less literate society is that, in the past, education was religious and it was the privilege of the Brahmins to have the knowledge of sacred scripures. However, trading and warrior communities had some education only for the purpose of acquiring skills in trading and warfare. Education to the middle and the lower castes was denied. Brahmins were the guardians of religion and interpreters of social relations, customs and laws. "Whatever the origin of these rules (the rules of social distance and relationship), their codification, recording and

adoption to the local circumstances have been primarily the work of Brahmins ".[28]

52. Describing the system of education in pre-British India, Cunningham wrote, " throughout the century, Brahmins were the repositories of learning and the directors of the Hindu life ".[29] Similarly Andre Beteille found that in the traditional system of learning, education was monopolised by Brahmins.[30] Though, during British days, education was secularised and formalised the Brahmins and the higher castes took advantage of the opportunities. The low and middle castes were unable to send their children to school. Economic poverty and the necessity for employing children on farms and other family occupations did not permit them to send their children to school. Added to it, the atmosphere was such that the high caste teachers discriminated against the middle and low-caste pupils. The high-caste teachers ridiculed and harassed the middle and the low caste children. Briggs states, " both teachers and pupils make it most difficult for low-caste boys to sit in class-room ".[31] The agricultural, artisan and service castes were economically dependent upon the high status castes. Attempts made by the agricultural, artisan and the service castes to send their children to school were thwarted by the high castes. They were made to belive that only the higher castes should have education. Cunningham wrote: " In a country of priests and peasants, the religious leaders and the landlords stood aloof ".[32]

53. When the educational system was secularised only a few non-Brahmin high-castes took to education. Even to-day, caste-education relationship appears to have remained more or less the same. The 1901 Census Report of India shows that " the most notable features of the returns is that everywhere the professional and trading castes take lead ".[33]

54. Towards the end of the British period, the educational facilities became comparatively wide and open. All castes, including the untouchable castes, were allowed in public schools, but the social and economic conditions were not encouraging. Even to-day the relation between caste and education can be noticed from Volume II of our Report and the disparity in education between the high status castes and the low status castes is very wide. The peasant, artisan, service, and low and untouchable castes withdraw from the school, even at the primary level. This is clear from a comparison between the number of students who passed the Vernacular VII Standard in 1972 and the number of students who passed the SSLC Examination in 1972 (vide Volume No. II). The number of drop-outs from those communities after SSLC could still be more. Besides the drop-outs, the number to be rejected at the selection for admission to higher and promotional standards is necessarily large in those communities for want of higher percentage of marks at the examination. Higher

the status of caste, larger is the number securing ranks, and very much larger is the number passing the examination successfully.

55. Indeed, the problem of education with the backward classes is essentially the problem of their residence in rural, segregated and isolated areas where the children are forced to attend schools with inferior teachers and low standard of education, and with old and dilapidated buildings. Even in urban areas the children of the backward classes attend schools maintained by the Government or the Municipality which have the same deficiencies.

XIX. Caste and politics:

56. Article 326 and 325 of our Constitution declare that election to the House of the People and to the Assembly of every State shall be on the basis of adult suffrage, that is to say, every person who is a citizen of India shall be entitled to be registered as a voter in any such election and that there shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the Houses or either House of the Legislature of the State and that no person shall be ineligible for inclusion in any such roll, or claim to be included in any such electoral roll for any such constituency on the grounds only of religion, race, caste or any of them. The said rolls are adopted as Voters' lists for elections to local bodies like Municipalities and Village Panchayats. From this it is argued by some that there cannot be any political stratification in India. But discussing a dmocracy such as ours, Marshal writes : " of the political dimensions it should be noted that in modern democracies, there can be no stratification of *individuals* on the basis of voting power, since it is equally distributed ", but states that there can be stratification on the *political dimension* in terms of actual distribution of political and governmental position, influence, activity etc.[34] Verba and Nie write, " access to opportunities to participate and the actual use of those opportunities could be one of the major basis of stratification in a society. A society could be highly equalitarian or highly hierarchical in relation to the distribution of participation."[35]

57. Anil Bhatt writes " that higher status castes shall have higher levels of political interest as compared to low status castes. A higher proportion of the Brahmins and other high castes show the highest levels of interest as compared to the other castes ".[36] He further writes that there is some overall difference between the higher status castes and the lower status castes in terms of *levels of* political interest. Again, Harijans and low castes show very low levels of political *information* and *strength*, or the *measure* of participation.

58. Many sociologists, administrators, planners and politicians have been holding seminars and discussion meetings with the agenda of the social stratification, and we believe that our Report with its

voluminous data will serve as an additional subject of " sociology of castelessness ! " on their agenda. Going through time, we come across innumerable radicals who opposed inequality. Religious leaders and social thinkers pleaded and advocated for equitable distribution of wealth. Political thinkers urged for equal distribution of power to all sections. And all declared for a change of society from the state of degradation to one where the rights, possessions, power and honour of one man are equal to those of any other. And to many of us now they have remained only a bundle of moral platitudes.

59. Political status of a caste has relevance to its power, influence, civil and political rights and position of authority in public institutions, Government, party or political involvement and activity. The available materials with the Commission help " divide the population into strata differentiated by extent of activity in the political process. A thin top stratum would contain genuine political activists.... The lowest stratum would involve the habitual non-voters and the persons with little awareness and no concern about political issues—the apoliticals ..... Between these two layers would be others defined by appropriate measures of the extent of their political activity."[37]

60. In a democracy right to participate by exercising the vote forms one of the most important sources of political influence, but the weaker sections, though given the right to vote, do not have the political influence, because social conditions do not permit them to participate at the top stratum and even at the middle level. However, it cannot be denied that political consciousness amongst the educated individuals, though few and the right for all to participate, have contributed to some extent for the weaker sections occasionally to exert influence on the elite, and acquire benefits. Indian society being highly hierarchical, distribution of participation and benfits is also hierarchical. From the 1952 first general elections untouchable castes are acquiring influence and positions of power or authority through participation in politics. Though the Indian society is highly hierarchical the democratic system is, in principle, open and universalistic. The fundamental goal of political participation is to enable every caste and every community to influence the actions of Government.

61. Certain castes have been traditionally deprived of any position on the basis of birth, and so the justification of reservation for Scheduled Castes, Scheduled Tribes and other backward classes in Government and in educational institutions, besides in legislatures for Scheduled Castes and Scheduled Tribes. The object is that the high caste leaders should not sit in judgment on the needs and problems of the backward and the depressed castes.

62. Although there is universal adult suffrage, low status castes find it difficult to participate in political activities, because

social conditions are not conducive. Their low socio-economic position does not allow them easy access to political participation which are of difficult forms. Resources such as education, knowledge, confidence, organisation, money and other skills needed for effective participation are all accumulated in the hands of the privileged castes. If resources necessary for effective participation are evenly dispersed, there would be a wider distribution of power at all levels. Effective participation by all castes and communities at all levels makes democracy successful. If the hierarchy of political participation continues to have relation to the ascriptive caste hierarchy, the effective democratic character of our society would be open to question. Indeed, effective political participation is especially more important for the weaker sections than it is for the upper castes. Our political system proclaims to strive for equality. Weaker sections have found the political sphere more easily accessible to them to use political channels—the representative institutions, the administration, the judiciary—to overcome social and economic deprivation. For the weaker sections like the low status castes, political sphere is intended to become a main avenue for social mobility. But, in practice, our politics has produced quite opposite consequences. The privileged and the entrenched strata have manipulated politics to consolidate their power and positions. However, it is heartening to note that the underdogs of the society are tending to gain, at least, to some extent. One present advantage is that democratic politics, both in practice and process, has provided an important avenue of mobility for the lower castes. Another important feature is that psychologically the lower castes have felt that they are in politics, on par with the high-born. This feeling of self-esteem is a far more important change in the low caste people. The hitherto entertained feeling that they were inherently an unimportant people without any potentialities to do anything good to their people, except serve the high castes, is in the process of being uprooted. Verba states: "In a society, where participation is a value, inability to participate represents a severe deprivation".[38]

63. Caste associations play an important role in the articulation of their caste interests. All political parties draw support from caste groups. Politicians assert that "a stable democracy requires a situation in which all the major political parties include supporters from many segments of the population".

64. However, political alliance between castes and political parties is raher unstable. Castes which are supporting one party to-day may themselves oppose the same party tomorrow. Generally, no caste identifies itself persistently with any political party over a great length of time. A caste may divide itself and enter into alliances with different parties. This, perhaps, is because of the fact that political positions of power are becoming increasingly available to *individuals* of almost all castes. Some decades ago political action

was determined strictly by caste. After Independence it has been possible for any social segments or strata to enter organised politics. Some 50 or 60 years ago organised party politics was the preserve of Western educated, upper-caste, urban people. Positions of political power and political roles have multiplied immensely after Independence, as they have become open to wider sections of the society. An elaborate body of differentiated political structures have grown after Independence, such as the Village Panchayats or Samithis, Taluk Development Boards, District Development Boards and other local authorities like Municipalities, and a good number of national and local political parties. These political parties have entered rural and village politics also. Besides, political parties and the democratic institutions have, at least in principle, universalistic approach in their constitutions, thus claiming to provide opportunities to *individuals* of all castes to occupy political positions. But, in practice, no political party can be placed above caste as a source of political power. Thus, political parties provide *individuals* of all castes with opportunity of mobility to gain political status. This opportunity is of significance, in particular, to the weaker sections and the Scheduled Castes and the Scheduled Tribes who are denied the social status under the traditional system. " After all, it would not require much ingenuity to show that everything that has been happening in India is related in some way to the caste system ".[39] There has been a relationship between caste and the political system, and caste has its role in its local politics as well as in wider political fields.

65. Castes are institutionalised units. They cannot work in vacuum. Political institutions and developmental institutions also cannot work in vacuum. Political and developmental institutions, to be successful in their working, try to find the existing bases. Castes have been with us as organized social units. After the advent of Independence and the introduction of political and developmental institutions on wider scale, castes have become, naturally, the bases for those institutions to function. We cannot say that politics is caste-ridden. We would rather say that political and developmental institutions are all interested in castes. The purpose of politics is to attain certain political, social and economic goals, and to achieve those goals there is bound to be competition in politics for acquisition of power. Political process consists in identifying itself with the already existing organized institutions like caste. It is manifested in mobilizing support of the people, and such mobilization or support could be successful through organised units, like castes, where all the people are members of one or the other unit. Political and developmental institutions are moulded by the caste structures and by caste aspirations. We are not of the opinion that there is casteism in politics; we are, however, of the opinion that politics has been moulding castes into democratic design. In Indian society we cannot think of annihilating caste. It reincarnates

itslf in different forms and with different aspects, and Indian politics is changing the traditional undemocratic caste into a democratic one. No political party can function without the support of the caste groups, though some of the political parties have broader bases to cover large number of castes. In India there are a number of caste and communal parties like the Hindu Mahasabha, Bharatiya Jan Sangha, Rama Rajya Parishat, Dravida Kazhagam, Dravida Munnetra Kazhagam, Rashtreeya Swayamsevak Sangh, the Sikh Parties in Punjab, the Naga Movement, the Muslim League, the Christian Associations, the Scheduled Castes Federation and so on. Almost every caste has its Association and the political parties do seek the support of such caste and communal associations. Caste associations participate in politics for attainment of some economic benefit or political goal. In the said process castes with common goals may form a federation, one caste depending upon the other for its support.

XX. Caste and economic development :

66. It is generally accepted that economic development is influenced by a variety of factors, some of which are commonly designated " non-economic " factors. There is increasing acceptance of that fact that the once common distinction between " economic " and " non-economic " factors is no longer useful. Rather, attention must be focused on those factors which are relevant, be they economic or otherwise. The reason for this view has its roots in something quite fundamental to an understanding of what *development* connotes. It is normal to distinguish between *economic growth* and *development*. Growth is primarily concerned with quantitative increases in the economy. In other words, when we speak of growth our attention is riveted on factors such as increase in production which are ultimately measured by a common index like the national income and/or per capita income. Development, on the other hand, is a much more comprehensive term. In essence, it refers to fundamental changes in the structure of society. Issues such as the distribution of the benefits of economic growth among different strata of the population, social mobility and the integration of the lower strata into the socio-political framework, to name only a few, leap to the eye when we speak of development. In brief, development refers to the transformation of a society's value structure and mores. The point need hardly be laboured that such a transformation cannot be analysed independent of social factors of which, in India, the institution of caste is an important one.

67. The relationship between caste and economic development is a two-way affair. Caste which divides society vertically has certain economic implications. The most striking of these is the caste-bound nature of many occupations. If a large number of occupations is caste-bound the immediate and obvious implication is rigidity leading

to low occupational mobility. An interesting but highly complex question is how this low mobility affects economic development.

68. The next relationship to discuss is how the process of development itself affects caste. For example does a higher rate of economic growth resulting in new employment etc., serve to break caste barriers Does increasing intrusion of urban-industrial values lead to a lessening of the hold of caste ?

69. Caste-bound nature of several occupations is especially true of certain essential but menial jobs such as scavenging. In India, in the absence of human labour for the cleaning of lavatories and for the disposal of night soil and sewage our towns and cities would present an even more grim picture than they now do. These and other jobs such as washing, hair-dressing etc., are totally caste bound. Rajalakshmi Misra's finding for Madras could well be true of almost all places, namely, that low castes are almost always engaged in low occupations.[40] The position of groups which perform these jobs is pitiable for two sets of reasons each of which reinforces the other. First, the economic condition of these groups is very poor. The vicious circle of poverty clearly operates in their case. Secondly, these jobs are despised occupations. The contempt in which these jobs are held, one is led to suspect, is the result of a total absence of any rational attitude towards them. It is a direct result of the " purity-pollution " image which is a central theme of the caste system.[41]

70. When this lack of a rational attitude is juxtaposed with the low ranking of almost all manual labour in India, one can visualise the effect of caste on occupational mobility. Nor is this confined only to the lower occupations. It is certainly a sound hypothesis that even in the higher occupations few people are willing to work with their hands. There is some evidence to indicate that even technologists show a marked preference for quill driving as opposed to working on the shop-floor even at comparatively high salaries. Although at this level jobs are not caste-bound the roots of this preference may be traceable ultimately to caste, in particular to the association of manual work with a low caste rank.

71. To revert to the earlier point, namely, the influence of caste on economic development, major emphasis here is on how occupational mobility is reduced because of the caste system. It has been contended that the caste system with its rigid stratification " seems totally incompatible with India's plans for economic development ". Since the needs of an industrial society demand a high degree of social mobility, both horizontally and vertically, the constantly changing needs of a developing economy are to be satisfied ".[42] However in practice a *modus vivendi* has been arrived at. As M. N. Srinivas has noted, in many cases, ritual has given way to convenience. That

is to say one does not often come across cases where higher caste workers have refused to accept a promotion, because of the necessity of working with people of lower castes. At the other extreme even industrialization has not meant that all caste barriers have been completely demolished. All that has occured is, as mentioned above, a *modus vivenda* based finally on necessity. Yet strangely enough there is still a paradox lurking in this situation. The spread of industrialization has meant migration to urban centres from rural India. The demands of urban life have undoubtedly resulted in the loosening of certain time-honoured caste taboos. For example housing on caste lines is less easily achieved in the city than in the village. However, the lowest castes have not benefitted from this movement to the degree one might hope for. For one thing many of them are bound by caste rules to offer services to caste groups above them in rank. The Holeyas and Madigas, for instance have a clearly defined relationship with peasants and other *caste*-Hindus in the village. They are mainly agricultural labourers owning little or no land themselves. Given the opportunity many of them would take up urban industrial jobs but for a variety of reasons it is not always possible for them to secure such jobs. One fundamental reason for this is that the increase in jobs has not kept pace with the needs of the economy. Naturally, when jobs are scarce influence and access play an important role and it is these which the lowest caste groups lack. This is specially tragic because they have the potential to emerge as a fully committed urban-industrial force unlike many from the peasant castes whose attachment to ancestral land prevents them from ever getting totally geared to urban-industrial life. Scarlett Epstein in her penetrating analysis of two villages in Mandya district has brought out this point brilliantly.[43]

72. There is hardly any doubt that the point made above regarding Holeyas and Madigas and other lower groups being passed over in employment is symptomatic of a deeper and disturbing trend. The truth is that the spread of the benefits of development have been most uneven. Major programmes in the rural areas like the package programmes leading to the Green Revolution have no doubt led to some progress, but they have also increased inequalities. Those with land in sizeable quantity have reaped benefits. The landless and those with small holdings have remained poor. Considering the fact that ownership of land is largely restricted to a few castes and that landless labourers are drawn from specific caste groups the inference is obvious that the gains of economic growth have only accrued to a few castes and that the process has served to aggravate caste differentiation in rural parts. The lowest caste groups have remained poor and their economic status being low, they are unable to participate effectively in any development activity.

73. The most striking feature of this last point is that while a few individuals (possibly a very small number) from the lower castes

have been able to improve their individual status, the castes as such have failed to do so. The reason for this is to be sought in the fact that there has been no cumulative upward movement which has been able to encompass these groups as a whole. In the absence of safeguards for groups, such as the landless castes, they are simply left out of the upward movement which is set in motion in the economy. Even when attempts are made they fail for want of sufficient holism in their approach. As an example, we may consider the grant of land to the landless. We often hear of reports that those who are granted land sell them to bigger landowners. The most common reason for this is that a landless labourer simply does not have the capital to undertake cultivation and unless he receives some support he cannot maintain himself even at the subsistence level until the crop is harvested.

74. Another point worth noting is that while one comes across a few individual cases of status improvement from the lowest castes, one never comes across a case of a higher caste person having taken to the occupation of the former. We suspect that the reason for this, besides the straight-forwad caste prejudice, is the utterly low economic rank of these occupations. Whatever the cause, occupational mobility is not only low but has not meant the divorce of caste and certain kinds of jobs referred to above.

75. These processes have inevitably meant that the lower castes do not play an active part in the socio-political arena--a role commensurate with their number. Although several planning activities are decentralised and the Government has been doing its best to encourage grass-root institutions, the economically worse off castes in the rural areas remain dormant. Virtually, every institution by passes them—co-operatives, local government, the whole gamut, in short. Their weak economic position coupled with the lack of political education make them sitting target for the articulate, economically powerful castes. Although the base of participation has widened in the last two decades, this widening has not resulted in all-round benefit to the people. On the decentralisation of planning V. K. Natraj writes : "The crucial point is that decentralisation requiries political education which alone can bring the underprivileged groups together in a common awareness of their rights".[44] He quotes P. K. Misra with approval that " No plan can be successful if the framers are different from the ones who are going to be affected by it".[45]

XXI. Caste and status summation :

76. The caste system is the oldest and most elaborate system of social organisation. One can easily know a great deal about an individual by knowing his caste. The relationship between the status of a caste-group in the hierarchy on the one hand and its occupation,

educational level, civil and political privileges, representation in services, ownership of property, income, expenditure etc., on the other is elaborate. Caste system is an institutionalised inequality, rightly described as the 'extreme opposite of an egalitarian democratic social order'. Some people describe our society as a casteless one, some find virtues in the present order and some suggest that the caste system should be remodelled on the basis of some undefined abstract ideals.

77. The data collected by us during the socio-economic survey and the materials relating to education and Government employment reveal the reality in a majority of castes to confirm the sociologists' definition that ours is a classical model of social stratification with summation of statuses. The status ascribed to a caste determines its opportunity or capacity to acquire ecnomic status, educational status, political status and, so to say, all other statuses.

78. There is thus inequality in the possession of wealth, inequality in income, inequality in education, inequality in status and inequality in political power amongst different castes. Social inequality appears to remain a permanent characteristic of our society.

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CHAPTER XXV

FINDINGS

1. Our Commission has not gone on the criterion of caste in deciding the social backwardness of castes and communities. However, so far as only a few of the 'backward tribes' are concerned, whom the State Government has already treated as denotified or nomadic tribes and about whom the population particulars are not available, we have applied the principle of caste. Some of those tribes belong to Hindu community and some to Muslim community.

2. In the determination of social backwardness, Supreme Court in Balaji case said that the *principle of caste* cannot have universal application, though it has relevance to Hindu castes.

3. Justice P. B. Gajendragadkar, who delivered the judgment in Balaji case, later stated, as Chairman of the Jammu and Kashmir Commission of Inquiry appointed in 1967, that *caste* in relation to Hindus was the criterion for deciding the *social* backwardness of castes.

4. Ambedkar, the chief architect of our Constitution in his evidence before the Article 340 Commission stated that status, i.e., the principle of caste, was the criterion for determining backwardness.

5. So far as our Commission is concerned, we have ignored the principle of caste—the principle of status—the principle of high and low—in deciding social backwardness.

6. We have gone on multiple tests such as economic, residential and occupational, in deciding social backwardness of castes and communities. In the social hierarchy, some of the castes and communities specified by us as backward classes occupy higher status in the conventional sense known to Hindu society. And yet, eschewing the principle of status—principle of caste—we have determined their backwardness on criteria other than *caste*. For instance, the traditional occupation of Ambalavasis is temple management, and that of Satanis is performing Pooja in public temples. The Arasus are a section of Kshatriya class. We found those sections to be socially backward because we applied tests other than that of caste. Castes and communities who occupy a low status in the hierarchy of castes have been excluded if they have shown economic and educational advancement. Here again, we may cite instances of Bhunts and some sections of Lingayats who,

being Shudras, and therefore low in the conventional sense, came to be excluded.

7. We have stated earlier that the State Government had not conducted the *ad hoc* socio-economic survey for deciding the economic backwardness of castes and communities. The Supreme Court in Balaji case arising from Mysore State had indicated that such a survey was a must. In July 1963 the Government treated individuals of poor economic income following certain occupations as backward, pending elaborate investigation.

8. When our Commission insisted upon the Government for sanctioning the necessary staff and funds for conducting socio-economic survey, the same was sanctioned on 25th April 1974. Due to the non-availability of trained Investigators in sufficient numbers the Government had to modify its earlier order and appoint the Social Welfare Inspectors of each Taluk and Sanitary/Health Inspectors of Corporations and Municipalities as Investigators by their Order, dated 21st October 1974. The Commission prepared the necessary Schedules as in Volume IV. It is needless to say that the survey has been conducted in a scientific manner. Every individual in the selected villages and urban blocks/wards was covered under the said survey. In the matter of selection of villages and city/town blocks, 20 District Social Welfare Officers were consulted. The Commission had selected 200 villages, at least one village from one Taluk and 204 Blocks from city/town/municipal areas. The number of villages surveyed is 193 and the number of urban blocks is 185. About 63,650 families with a population of about 3,55,000 have been covered. 378 Investigators collected the information for more than six months under the supervision of 20 District Social Welfare Officers and 19 District Statistical Officers. In addition, the Deputy Secretary of our Commission, who is also a Joint Director of Bureau of Economics and Statistics, supervised the survey work. Training was given to the Investigators in the respective headquarters and two meetings of all the District Social Welfare Officers were held in the office of the Commission for giving them necessary instructions. Out of the 404 villages and town/city blocks the Commission received the survey material from 193 villages and 185 urban blocks. In addition to the office staff, the Commission appointed 100 Tabulators. The complexity and magnitude of the work was such that the entire staff had to work beyond office hours for more than one-and-half years. Indeed, the work would have taken still more time but for the Commission commencing the survey work earlier, in anticipation of Government sanction. The Deputy Secretary of the Commission supervised the compilation work in the office in addition to the work of supervising the survey. Here again, we are sorry to state that the Directorates of Social Welfare, Bureau of Economics and Statistics and Census Department had declined to undertake the responsibility of conducting the survey.

9. Some of the Investigators who belonged to the Department of Social Welfare and Municipal Administration did not evince interest in the earlier stages, and the Commission had no control over such officers. Sometimes the Chairman, sometimes the Secretary and sometimes the Deputy Secretary of the Commission had to personally go to the district places requesting the Deputy Commissioners for issuing directions to the Investigators. In spite of the efforts, as stated above, information from 26 villages and city/town blocks is not received.

10. The importance of the material we have collected need not be exaggerated. The State and Central agencies like the National Sample Survey Organization and the Bureau of Economics and Statistics have not been collecting and publishing caste/community-wise statistics on various aspects of the socio-economic conditions of the people. There are some Research Institutions aided by Government but they too are not collecting such information. The socio-economic survey that we have conducted provides statistics of certain castes and communities on demographic characteristics. The data also give a picture of the social environment, economic conditions, residence pattern etc., of about 171 castes and communities in the State. Besides, they include matters such as unit of family, household composition, marital status, age, sex ratio, occupation, income, living conditions, social amenities and so on. Information on all these aspects was obtained through interview of households. The five Schedules were designed to facilitate the collection of data in an easy and simple way.

11. Schedule 1—List of Households—was used for listing all buildings within the boundaries of the selected village or town/city division. Information on the household numbers, caste and purpose for which the building was used was recorded in this Schedule.

12. Schedule 2 was intended for recording information in respect of each individual house-hold listed in Schedule 1. This Schedule was intended to elicit information on personal characteristics, education, employment, household particulars, land holdings, ownership of houses, living conditions, health conditions, livestock, agricultural implements, vehicles, radios and news-papers, membership in co-operatives and political organizations, cottage industries, income and expenditure and traditional occupation.

13. Schedule 3—Village/Block Schedule—was intended for collection of information about institutions at the village/ward/division level. This information includes the geographical area, population, literates, area cultivated, caste-wise composition of village panchayat, co-operative society, money-lending business, educational institutions, hostels for students, industrial establishments, arts and crafts, hospitals/dispensaries, shops and commercial

establishments, hotels and restaurants, dharmashalas and choultries, mutts or monasteries, customary services, nomadic and criminal tribes, begar and forced labour, religious institutions, drinking water facility, leadership in the village etc.

14. Scheduled 4—Taluk Schedule—was used for collection of information about the institutions at the taluk level, such as the Taluk Development Board, Taluk Marketing Co-operative Society, Land Development Bank, Municipality/Town Panchayat etc.

15. Schedule 5—District Schedule—was used for collection of information about the institutions at the district level such as the District Development Council, District Central Co-operative Society, District Industrial Co-operative Society, District Regulated Market Committee, etc.

16. Schedules 4 and 5 included columns for collecting information about the membership in the State Legislature and Parliament.

17. Investigators and Supervisors were given proper instructions and training before they were asked to undertake the job. Even so, the Social Welfare Inspectors and Sanitary Inspectors/Health Inspectors being incharge of the respective taluks, towns and cities were sufficiently acquainted with the local people and their conditions, and so they were able to collect the correct information.

18. To repeat, the survey covered 171 castes, tribes and communities in the State with a population of 3,54,960 out of which 1,83,868 were males and 1,71,092 females.

19. The maximum coverage for such a survey is 1 per cent, but our coverage is about 1.18 per cent, which means 18 per cent more than the universally prescribed maximum coverage.

The list of villages/towns/blocks in each taluk, town and district, the number of house-holds and the total number of persons covered under the survey is contained in Part II of this Volume.

20. The Commission undertook tours both inside and outside the State and the details of the tours are also mentioned in this Volume (Part II).

The Commission co-opted members of the Legislative Assembly, Legislative Council, Lok Sabha and Rajya Sabha, Municipal Presidents and Councillors, Taluk Development Board Presidents and Members, Village Panchayat Committee Chairmen and Members, lawyers, doctors, social workers, former Ministers and former Legislators, including women, numbering more than two hundred. The Commission Chairman obtained the consensus of eminent

jurists, including the former Chief Justice of India, by participating at the Jurists' Seminar on Backward Classes held in September 1973. The written speeches of the jurists are included in this Volume (Part II). The speech of Chairman Havanur is not included in the Report, since it is published in 1973(2) Mysore Law Journal.

21. After the Commission was invested with the powers of Court under the Commissions of Inquiry Act, necessary notifications were published in the local papers and evidence of 365 persons was recorded. The summary of their evidence is contained elsewhere in this Volume.

22. The Commission sat, in all, for 87 days. For deciding the educational backwardness of castes and communities the Commission secured the S.S.L.C pass information to the extent of 98.5 per cent. The reason why information relating to the remaining 1.5 per cent of the students was not available was that some of the Christian Missionary Institutions had not maintained caste particulars of the students. The other reason was that some of the students were repeaters at the March/April 1972 examination, as is made clear by the Chairman of the S.S.L.C. Board. Barring about 1,000 students, whose caste particulars were not obtainable, the Commission was able to collect information to the extent of almost 100 per cent.

23. Regarding caste/community particulars of pupils passing the Vernacular VII Standard Examination in March/April 1972 and March/April 1974, the Commission was able to secure information to the extent of 100 per cent.

24. The census of Government employees was conducted by the Commission with caste/community particulars, and here again barring very few departments who have not furnished the complete information, the percentage of information the Commission has collected exceeded 98.5 per cent. The compilation of the education particulars and service particulars was all done by the Commission staff working some days round the clock.

25. The post of the Secretary was vacant for one or the other reason for more than 1½ years and the post of Deputy Secretary was vacant for more than one year. It was the responsibility, therefore, of the Chairman to supervise the work of the staff, receive replies to the Questionnaire, memoranda and representations, attend to office correspondence, undertake tours in the State, record the evidence, conduct meetings, and so on. On the request of other members of the Commission, the Chairman prepared the report.

26. The report speaks of the massive work turned out by the Commision in a considerably short period in spite of the unhelpful attitude of some of the departments and officers.

27. The Commission had before it the entire socio-economic survey data and monographs of about 25 villages in respect of which the socio-economic survey was conducted by the Census Department in 1961 with caste/community particulars. In addition to the said empirical materials the Commission undertook intensive tours in the State and heard the oral evidence of representatives of many castes and communities. The members of the Commission personally visited the localities, houses, and huts in which people of different castes and communities were living and satisfied themselves about the living conditions and the problems of those people. Some of the members of the Commission visited places outside the State. The total number of replies to the Questionnaire/Memoranda/ Representations received is 783. On the basis of living conditions of different communities and their educational attainment the Commission proceeded to determine their social and educational backwardness.

Social and Educational Backwardness

28. We have discussed earlier, in brief, how the Hindu society has been devitalised by the corroding effects of caste. Stratification of Hindu society into hierarchical caste groups has resulted in untouchability. Taboos on food and drink are generally observed by all Hindus in rural parts. The rule of endogamy has perpetuated caste system. Although modern conditions are obliterating some of the caste practices, caste system as such is powerful. Caste operates in almost every conceivable activity in social life. Reformist movements in the past have not made any appreciable influence on Hindu society. Required efforts have not been made for the removal of untouchability and the undesirable features of the Hindu social system. Achievement of fusion of all Hindu castes into a single homogeneous community appears an impossibility. The rigours of caste inequalities and untouchability prevail in an intensified manner in the villages, though in towns and cities, caste distinctions are less rigorous. This unhealthy trend is bound to continue until the caste system is abolished. There is no possibility, at least in the foreseeable future, of the abolition of caste system. It is for this reason that the Constitution makers provided for only equalisation of all castes by removing economic inequalities and social discriminations. As one of the measures of equalisation, Constitution by Article 17 abolished the practice of untouchability, and by Article 15 provided for removal of social discriminations. Neither the advanced castes nor the depressed and backward castes have an urge to annihilate caste system.

29. Indian Constitution is a secular one. Fundamental right freely to profess, practise and propagate religion has been granted to every individual and every religious denomination and caste group. Individuals and groups have been granted fundamental

rights to establish and maintain institutions for religious purposes. The practice of Hindu religion necessarily consists in maintaining caste system. There is no provision in the Constitution for bringing a legislation abolishing caste system. The secular characteristic of our Constitution consists in the non-interference by the State in the Hindu caste system. Spirit of casteism pervades everywhere, and the President's Backward Classes Commission had found casteism everywhere. After noticing the preponderance of some castes in Government services it said 'the administrative machinery of the Governments—Central and State—should be cleansed completely of the spirit of casteism and its undesirable features'.

30. Our Commission undertook tours in the State, and visited many caste and communal organisations and institutions. The activities of those organisations and institutions were confined to members of particular castes and communities. Educational hostels are meant only for students of their respective communities. Even the charitable institutions were serving their respective communities only. Such institutions are located mostly in the urban areas. They were interested in the economic activity of their communities.

31. On the basis of the data collected in the course of the socio-economic survey, the statistics on educational attainment at the high school level, the evidence of hundreds of witnesses, supported by our impressions gained through personal observation, we have come to the conclusion that, broadly, the following factors have contributed to the social and educational backwardness of castes and communities specified by us in Statements 7, 8 and 9 of Volume II. (Consolidated Statement is at 6).

(i) The majority of the people belonging to castes and communities specified by us are residing in rural, isolated and segregated areas.

(ii) Their economic condition is so poor that the majority of the castes and communities are incapable of owning land, house or other property.

(iii) Occupations in which they are engaged are very unremunerative, and they do not get adequate return for their labour. Their occupations are considered unclean or inferior, and therefore low.

(iv) People of the advanced castes and communities entertain prejudice against them.

(v) Low status or inferiority associated with their castes makes it difficult for members of the backward classes to have access to places of cultural training, or to have religious and secular education.

(vi) Many of the castes and communities have been segregated from the advanced communities due to social taboos against

inter-dining and inter-marriage, and against similar opportunities of association.

(vii) Backward Classes are being prevented from enjoying status in society due to the age-old social customs.

(viii) Due to their habitation in rural areas and segregated and isolated places, their economic poverty, their inferior and unremunerative occupations, unhealthy conditions in which they are living, absence of contact with the advanced communities and prejudice in the minds of advanced communities, backward classes have developed apathy for education. The absence of adequate number of educational institutions in rural areas has also contributed to their educational backwardness.

(ix) There are no residential hostel facilities for the members of the backward classes either in rural areas or in urban centres. They do not have resources to open educational institutions and provide hostel facilities to the members of their own castes and communities, as is done by the advanced communities.

(x) Government also has not cared hitherto to open required number of schools, high schools, colleges and free hostels in the rural areas to encourage students belonging to the backward classes.

(xi) Government policy of sanctioning larger number of high schools and colleges to private agencies to meet the increasing demand made by the advanced communities has aggravated educational disparities between the advanced castes and backward castes.

(xii) The method of selection of students at every level for promotion to the higher standard and course of study on the so called theory of merit has cut at the roots the sources supplying students belonging to the backward classes. This rejection of students belonging to backward castes and communities has acted as a damper on those communities to pursue further studies.

(xiii) Occupational, environmental and economic conditions have resulted in many drop-outs from the backward castes and communities, and they have also contributed to the stagnation of students.

(xiv) The non-co-operative and discouraging attitude of some of the educational institutions founded and managed by certain castes and communities has not helped the educational advancement of backward castes and communities.

(xv) The present system of education has not at all helped the backward castes and communities.

(xvi) The scheme of compulsory primary education has not attracted and enrolled proportionate number of students between the age group of 6 and 14 from the backward castes and communities.

Note :—

We have not adopted the traditional approach of treating a class as socially and educationally backward on the ground of its inadequate or absence of representation in State services. In our opinion, the inadequate or absence of representation is the result of its social and educational backwardness, and not the cause.

32. Census authorities do not collect literacy percentage of any caste or community. Even so, judiciary has disapproved of taking literacy stage as the basis for determining the educational backwardness of castes and communities.

33. Some witnesses suggested to the Commission that for assessing the educational backwardness or otherwise of castes and communities the level should be University graduation at the first degree. Some suggested the level at the Pre-University course, and all the remaining witnesses suggested that pass in SSLC examination should be the proper level at which the Commission could decide the real backwardness in education.

34. In 1955, when the Free and Compulsory Primary Education scheme conceived of by Article 45 was not yet introduced, the President-appointed Commission suggested that at least the elementary stage of education should be the criterion for deciding educational backwardness. Now that compulsory and free education at the primary level is introduced, and large number of drop-outs is from the backward castes and communities, who later lapse into illiteracy, the proper level is pass in the SSLC Examination. For entry into Government service of the last grade in the non-gazetted cadres, and for admission to various courses of study preparatory to University degree the minimum qualifying examination required is a pass in the SSLC examination. Therefore, the Commission took the stage of SSLC examination for determining educational backwardness.

35. The State average of students passing SSLC Examination in April 1972 is 1.69 per thousand of State population. The Commission decided that a caste or community whose student average per thousand of its population passing at the April 1972 SSLC examination is below State average should be treated as 'educationally backward'. After satisfying ourselves about their *social* backwardness, by applying the multiple tests, castes and communities are categorised into three groups.

The said three categories whose student population is below the State average are :

(i) *Backward Communities* (whose student average per thousand of population is below State average, but above 50 per cent of the State average)—Statement 7, Vol. II.

(ii) *Backward Castes,* (whose student average per thousand of population is below 50 per cent of the State average)— Statement 8, Vol. II.

(iii) *Backward Tribes,* (whose student average is below 50 per cent of State average, except Dombars and Voddars, and who are Nomadic and Denotified Tribes.— Statement 9, Vol. II.

36. The population of the *Backward Communities, Backward Castes* and *Backward Tribes* together comes to about 45 per cent of the State population. Although the Mysore High Court in Viswanatha case (AIR 1964 Mysore 132) said that the majority population in our State was backward, we are constrained to confine the population of Other Backward Classes to only 44.52 because of the application of the educational test suggested by the judiciary.

37. Other Backward Classes under Article 15(4) need not necessarily be the backward classes under Article 16(4). In other words, for benefit of reservation under Article 16(4), a class of citizens should first satisfy the requirements of Article 15(4) as respects its social and educational backwardness. If a class of citizens is socially and educationally backward under Article 15(4) and does not have representation adequate to its population, it could be specified as a socially and educationally backward class not adequately represented in the services. Applying this rule the Commission prepared a list of socially and educationally backward classes not adequately represented in services for purposes of Article 16(4). Some of the communities which came to be treated by us as socially and educationally backward classes under Article 15(4) came to be excluded while preparing the list under Article 16(4). The reason being their having adequate representation in services. The lists of Other Backward Classes for purpose of Article 16(4) are in Volume III.

38. From the year 1962 admissions to technical colleges and recruitment to Government services have been made on the basis of occupation-*cum*-economic poverty of an individual, irrespective of the candidates caste and community, and advantages have been taken by those who do not belong to the backward castes and tribes. We would have recommended for reservation of seats in technical Schools and Colleges and of posts in Government services to the extent of 75 per cent for those three categories, but under fear of such reservation being considred excessive by the judiciary, we confine, here again, to the reservation of minority seats and posts. The problem of backward classes in Karnataka is something extraordinary, because of the denial of the benefits all these years, and we recommend to the Government to make reservation to the

Other Backward Classes under Article 15(4) read with Article 29(2) to the extent of 32 per cent and also under Article 16(4) to the extent of 32 per cent. This quantum of reservation to the population of about 45 per cent is not excessive ; on the contrary it is far less than their proportion to the State population.

39. Justice P. B. Gajendragadkar of the Supreme Court who suggested the limit of 50 per cent reservation in Balaji case later said, as Chairman of the Jammu and Kashmir Commission of Inquiry, that *ordinarily* the limit of reservation should be below 50 per cent. In other words, if *extraordinary* circumstances prevail in any State, reservation could exceed 50 per cent. Justice Fazal Ali, Judge of the Supreme Court, suggested 80 per cent reservation being permissible in C.A. No. 1160/1974, dated 19th September 1975. Even so, we do not propose reservation beyond 50 per cent including the reservation already made for Scheduled Castes/Tribes.

The quota of 32 per cent to the Other Backward Classes under Article 15(4) is allotted in the following order :

		% of population	Quota of Allotment
(i) *Backward Communities*	..	22.03	16%
(ii) *Backward Castes*	..	14.49	10%
(iii) *Backward Tribes*	..	8.00	6%

The quota of 32 per cent to the Other Backward Classes, in Government services under Article 16(4) shall be as under :

		% of population	Quota of Allotment
(i) *Backward Communities*	..	19.20	16%
(ii) *Backward Castes*	..	14.47	10%
(iii) *Backward Tribes*	..	8.00	6%

40. If seats/posts remain unfilled in the quota allotted to *Backward Tribes,* they should be made over to *Backward Communities* and *Backward Castes.* Similarly, if seats/posts remain unfilled in the quota allotted to *Backward castes,* they should be made over to *Backward Communities* and *Backward Tribes.* If, however, seats/posts remain unfilled in the quota allotted to any of those three categories they should be made over to Scheduled Castes and Scheduled Tribes. In the event of seats/posts remaining unfilled by any of those categories they should be transferred to the 'general pool'.

41. Selection Committees should necesarily consist of representatives of the said three categories of backward classes in the way

in which Scheduled Castes and Scheduled Tribes have been represented on such Selection committees.

42. Interview test and *viva-voce* examination to assess the personality of candidates for admission to technical courses of study or entry into Government service are as important as is the written examination intended to assess their academic attainment. Interview or *viva-voce* test should not be subordinated to the written examination, or its importance minimised by prescribing less number of marks. Marks at the interview/*viva-voce* should be equal to the maximum marks prescribed for the qualifying written examination. The method of first sorting out the applications on the basis of the percentage of marks secured at the written examination, and not inviting for interview/*viva-voce* test those who have secured marks below a certain level, is arbitrary. It has the effect of rejecting meritted candidiates for interview/*viva-voce* test where they could have shown their aptitude for the course of study or their ability for a particular type of job, as the case may be. We suggest the following method :

All applicants for admission to technical courses of study or for appointments should first be called for interview test/*viva-voce* examination, and selection made for written examination on the basis of their performance judged by the marks secured at the interview/*viva-voce.*

List of students/candidates in order of merit should be prepared, and students/candidates four times the number of seats available for admission or four times the vacancies available for filling, should be selected for written test.

Reservation and method of implementing it should continue for at least 10 years, and after a period of 10 years the position should be reviewed.

Primary schools and other educational institutions should be directed to include a column in the Admission Register relating to the caste of the student. Similarly, the Heads of Departments should also be directed to enter the caste of the employee.

Sufficient number of free hostels should be started at least one in every village where there is a Panchayat, and in every town having a college. Students should be admitted to the free boarding and lodging hostels in the proportion stated above, provided the income of the parents of the students of the ' Backward Classes ' is below Rs. 6,000 per annum.

Reservation should also be made in the Post-graduate courses and Research Institutions. Scholarships to 100 students per year should be given in the proportion stated above to the three categories of ' Backward Classes ' to go abroad for higher and specialised

studies in Medicine, Engineering, Agriculture and other technical courses.

Those who do not get admission into free hostels should be given adequate scholarship to be determined periodically.

Students whose parents' income is less than Rs. 6000 per annum should be exempted from payment of tuition and examination fees at all levels of education.

Government should constitute a 'Backward Classes Advisory Board', and the membership should be confined to the said three categories of Backward Classes.

A separate Directorate for Backward Classes should be established to look after the effective implementation of the measures intended for them. A Minister of Cabinet rank should independently hold the portfolio relating to Backward Classes.

A Finance Corporation similar to the one incorporated for the economic upliftment of the Scheduled Castes and Scheduled Tribes be incorporated for the economic upliftment of the Backward Classes.

Government should establish a Research Institute for studying the problems of Scheduled Castes, Scheduled Tribes and Backward Classes and for suggesting measures for the upliftment of those classes.

Backward Classes, Scheduled Castes and Scheduled Tribes should develop a spirit of self-help and those who get the benefit on the ground of their caste should make free contribution of 10 per cent of their income to the proposed Finance Corporation, so that the money so released could be utilised for payment of Scholarships, Free Studentship etc., to students belonging to those classes. The funds so realised could be utilised also for economic improvement of those classes.

CHAPTER XXVI

SPECIAL GROUPS

Recent information as to the population of Hindu castes and their regional distribution was not available. Information regarding the perecentage of literacy or educational level of Hindu castes and of religious minorities like Muslims and Christians, distribution of different Hindu castes and non-Hindu communities in the rural and urban areas, per capita income of castes and communities—either rural or urban—their occupations, their living conditions, changes in the rural economy which have relevance to the economic condition of the rural castes and communities, and literacy and educational level of their women, was also not available to the Commission from any of the Government Departments, including the Bureau of Economics and Statistics. The absence of such information is due, mainly, to the absence of collection of such information by the Census Department and the absence of interest shown by the Government in conducting at least *ad hoc* surveys.

Non-availability of such data, to some extent, hampered the effective functioning of the Commission. The subject 'Census' is enumerated in List I—Union List, at Item No. 69. The power of conducting Census is exclusively vested by Article 246 in the Union Government. From the way in which the Union Government has disrespected the recommendations made by the Backward Classes Commision appointed by the President of India under Article 340, we are justified in inferring that the Union Government is not keen on identifying the Other Backward Classes to be specified by the President under Article 338(3). Union Government has disrespected the Constitutional mandate and has ignored the claims of 'Other Backward Classes'. Such attitude has resulted in inestimable injustice to them.

The enumeration of the subject 'Census' in the Union List and the attitude of the Union Government in not conducting the census securing caste particulars need not dishearten the State Government. The State Government is at liberty to conduct *adhoc* socio-economic surveys through its various departments like the Social Welfare Department and Bureau of Economics and Statistics. In addition, item No. 30 in List III—Concurrent List—refers to 'vital statistics' and the subject 'vital statistics' is comprehensive enough to include topics of social, sociological and economic importance. We, therefore, recommend to the State Government that in the event of the Union Government not conducting census in the above manner, the State Government should direct its various departments like the

Social Welfare Department and the Bureau of Economics and Statistics to collect and compile the said information. In addition, we suggest that the State Government should start Research Institutions, and encourage by liberal assistance, Universities or private institutions undertaking such investigation. However, care should be taken to see that sociologists and economists of repute are entrusted with the job.

Muslims :

Muslims *in toto* cannot be considered a backward class. The Commission has, however, treated some known and readily identifiable sections of Muslims as backward classes who are declared by the Government either as Denotified Tribes or as Nomadic Tribes. The inclusion of those tribes in the list of " Backward Tribes " is bacause of the ruling of the Supreme Court in Balaji case (A.I.R. 1963 SC 649).

Muslims as a religious minority could be treated as a special group for purposes of reservation in educational institutions and representation in Government services under Article 14. We, therefore, recommend that Muslims be treated as a special group on grounds of their religion and language under Article 14, and facilities extended to the backward classes be extended to them also. However, reseravation in educational institutions and Government services should not exceed 6 per cent.

Christians :

Christians' educational level is sufficiently higher than the State average. Their representation in services is also more than adequate. They too *in toto* do not come within the meaning of the expression 'Backward Classes'. The representatives of the Christian community claim benefits for the Untouchable converts to Christian community. It is not possible to ascertain which of the Untouchable castes have embraced Christianity and at what point of time. It is not possible to ascertain their population. The Church authorities also have not maintained the caste origin of the entrants to Christianity. Official records like the Birth and Death Registers, Admission Registers maintained in Schools and Colleges and Service Registers of employees too do not mention the caste origin of the converts to Christianity. In the course of the socio-economic survey conducted by the Commission, not one Christian has disclosed his or her original caste identify, though specific open-ended questions were prescribed.

The representatives of the Christian community produced the correspondence they had made with the Union Government. They also produced Orders passed by some State Governments which have treated the Untouchable converts to Christianity as a 'Backward

Class'. Some of the Orders produced by them show that the Untouchable converts to Christianity were treated as a 'Backward Class'(?) for purposes of certain educational concessions like freeship, scholarship, exemption from payment of examination fee etc. That such concessions have been given to Untouchable converts to Christianity cannot be a guide or a model to our Commission. We are not aware of the circumstances prevailing in those States, and the material the other State Governments were having in their possession in respect of the untouchable converts to Christianity.

The complaint of the representatives of the Christian community related also to the non-inclusion of the Untouchable converts to Christianity in the Presidential list of Scheduled Castes under Article 341. Their argument related mainly to the interpretation of Article 341, and of Article 366 (24) where the expression 'Scheduled Castes' is defined. According to them, the said provisions of the Constitution do not speak of finding the Scheduled Castes only from among the Hindu castes. This argument on the part of the leaders of the Christian community has gained currency some time during the 1950s. The Government of India Act, 1935, defined the expression 'Scheduled Castes' as those Castes and Tribes who were formerly known as Depressed Classes. It also defined the Indian Christians. It is a known fact that the Depressed Classes consisted of only the Hindu untouchable castes. Literature on Depressed Classes or Scheduled Castes, particularly the debates in the Constituent Assembly, shows that the expression 'Scheduled Castes' includes only the untouchable Hindu castes. The Note appended to the President's Order of 1950 made under Article 341 also makes the position clear. We are therefore, not convinced about the claim made by the representatives of the Christian community that Untouchable converts to Christianity should be included in the list of Scheduled Castes, nor the claim, in the absence of relevant material, that the Untouchable converts to Christianity be treated as 'Backward Classes'. Indeed, religious minorities and religious denominations as such, like Muslims, Christians, Jains, Parsees, Anglo-Indians do not come within the meaning of the expression 'Backward Classes'. We cannot also recommend their case for consideration under Article 14, because Christians as a community have made advancement in education and have more than adequate representation in services.

Anglo-Indians:

It has been fairly conceded by Frank Anthony, the 'Father of Lok Sabha' and an unquestioned leader of the Anglo-Indian community, that the Constituent Assembly, of which he was a member, did not consider Anglo-Indians and other religious and denominational non-Hindu minorities as falling within the meaning of the expression 'Backward Classes of citizens'. He also said that besides Anglo-

Indians, other Christians also cannot be considered to be a backward class, not even the untouchable converts to Christianity.

Women :

It is, no doubt, true that women in general belonging to different castes and communities suffer from certain legal and customary restrictions and social taboos. A special provision for ameliorating the difficulties under which they labour can be made under Article 15 (3). They do not constitute a backward class. Their condition, to a certain extent, could be improved when a uniform Civil Code thorughout the territory of India is secured. Their topic does not fall within the purview of our Commission. The implementation of the directives contained in Article 39 (a), (d) and (e) could also improve their economic and living conditions. Accordingly, we make a recommendation to the State Government that the provisions of Article 39 (a), (d) and (e) be implemented with special reference to women. The President-appointed Commission observed :

> " 24. Our public life is dominated by the advanced communities. The result is that whenever we talk of the advancement of women, it is the women of these classes that are foremost in our mind. The women-folk of the teeming millions of the labour class and of the artisans and occupational classes are rarely thought of. There is, today, a great need of uplift measures for these women ".

We fully agree with the opinion of the President-appointed Backward Classes Commission. Measures intended for the economic and educational upliftment of women should be confined to the women of the agricultural communities, artisan and occupational communities and of the Scheduled Castes/Tribes. Further, such measures should be confined to the women of the rural areas belonging to those communities.

Education at all stages should be made free to girls belonging to classes who have been treated as backward by us and also to girls belonging to the Scheduled Castes and Scheduled Tribes, irrespective of the income of their parents. So far as girls belonging to the advanced castes and communities are concerned, encouragement in the form of scholarship and free-studentship should be given where the parents ' income is less than Rs. 6,000 per annum.

Residential hostel facilities should be provided for girls belonging to the backward classes. Sufficient number of seats be reserved for girls belonging to the backward classes in colleges and institutions of higher learning, including Medical, Engineering and Home Science Colleges, and in Schools which train students in Fine Arts, Social Service, Nursing etc.

Nomadic and Criminal Tribes:

The Nomadic and Denotified Tribes should be given facilities for leading a settled life. They should be encouraged to live in towns and villages so that they could gradually assimilate themselves in the society. Children of Denotified Tribes and Nomadic Tribes should be trained in basic education. Surplus land available as a result of introduction of land ceiling, and the Government land should be granted to the landless members of Nomadic and Denotified Tribes, as is done in the case of Scheduled Castes and Scheduled Tribes.

A Finance Corporation similar to the one created for the economic advancement of the Scheduled Castes and Scheduled Tribes should be created seperately for the benefit of Nomadic and Denotified Tribes.

Revision of lists of SCs/STs:

The 1961 Census collected population and other particulars relating to Scheduled Castes and Scheduled Tribes, perhaps because of a provision in the States Reorganisation Act of 1956. The Commission noticed that the Census Report of 1961 did not contain the population figures of all castes and tribes specified by the President of India under Articles 341 and 342. While the said lists refer to the existence of castes and tribes in the State, the Census authorities should have made efforts to ascertain the population of every caste and tribe. From this it could be said that even the few enumerated Scheduled Castes and Scheduled Tribes in the Census Report do not appear to have been wholly covered as respects their exact population, and so, the Scheduled Castes and Scheduled Tribes have been deprived of their adequate share in all fields, proportionate to their population, including their legitimate share of participation at all levels of political and democratic institutions. The actual population of Scheduled Castes and Scheduled Tribes appears to be much more than what is returned at the Census.

The new State of Karnataka was formed on 1st November 1956 integrating areas of five different States with unequal status. Districts from Bombay and Madras States which were Part-A States, the entire Old Mysore State and some districts of Hyderabad State which were Part-B States and the entire Coorg District which was a Part-C State came to form the new State and the lists of Scheduled Castes and Scheduled Tribes which were in vogue in their respective parent States came to be continued in those areas after 1st November 1956. A caste or tribe which is scheduled in one area, either under Article 341 or Article 342, is not so scheduled in respect of other areas. The State Government and the Union Government should have brought about uniform lists of Scheduled Castes and Scheduled Tribes applicable uniformly to the entire State.

There are some anomalies; for instance, the Lamanis and Vodders (Bhovi) of Old Mysore area are treated as Scheduled Castes, but not so in the remaining areas of the State.

The list of Scheduled Castes should contain, in principle, the Hindu Untouchable castes. (However, the Commission noticed that a Muslim section called 'Halalkhor' is also treated as a Scheduled Caste in so far as the Bombay Karnataka area is concerned). But in the categorization of castes and tribes under Art. 341, the President of India did not seem to have applied the criterion of untouchability to all castes and tribes specified by him in the 1950 Order. The Lamanis and Voddars, who are now Scheduled Castes under Article 341, in so far as the Old Mysore area is concerned, do not suffer from the stigma of untouchability, nor their occupations considered unclean. The representatives of Lamanis and Voddars who gave evidence before the Commission did not claim that they suffer from the stigma of untouchability. There has been a sort of agitational dissatisfaction and discontentment with the untouchable Scheduled Castes about the presence of Lamanis and Voddars in the Schedule under Article 341. Their grievance is that if in the enumeration of Scheduled Castes untouchability was the sole criterion, the inclusion of touchable castes like Lamanis and Voddars has resulted in the deprivation of their legitimate share in all fields. Our Commission feels that the grievance of the untouchable Scheduled Castes is not without reason. And their grievance is legitimate. The representatives of Lamanis and Voddars said that they want to be included in the list of Scheduled Tribes under Article 342. Similar was their plea before the Parliamentary Committee on the Revision of lists of Scheduled Castes and Scheduled Tribes, 1967.

Some of the Castes and Tribes now found in the Schedules have made sufficient progress in the field of education and Government service. Continuance of such Castes and Tribes in the Schedules has adversely affected the interests of those who are yet at the rock bottom.

Although the terms of reference by which our Commission came to be appointed do not authorise our Commission to make a venture of suggesting the revision of lists of Scheduled Castes and Scheduled Tribes, we feel that we are justified in recommending to the State Government that it should, in turn, recommend to the Union Government for immediate revision of the lists of Scheduled Castes and Scheduled Tribes and for uniform list of Scheduled Castes/Tribes applicable to the entire State. The Commission also recommends that in the ensuing Census effort should be made for ascertaining the exact population of all the castes and tribes specified in the Schedules under Articles 341 and 342.

CHAPTER XXVII

NOMADIC AND CRIMINAL TRIBES

Item No. 15, List III—Concurrent list—of the Constitution provides for the making of law in respect of "vagrancy; nomadic and migratory tribes". Except the general provisions contained in the Indian Penal Code, the Criminal Procedure Code and the Habitual Offenders' Act, which relate to punishment of habitual offenders, the Commission is not aware of legislative enactment passed either by the Parliament or by the State Legislature for the social and economic improvement of those classes and for their cultural development.

2. Ambedkar states[1]:

"Besides the Shudras, the Hindu civilization has produced three social classes whose existence has not received the attention it deserved. The three classes are:

(i) The Criminal tribes....;

(ii) The Aboriginal Tribes....; and

(iii) The untouchables....; and

The existence of these classes is an abomination."

3. Constitution by Arts. 342, 341 and 366(25), 366(24) has defined the aboriginal tribes and the Untouchables, the last two categories named by Ambedkar, but the first category, *viz.*,' the Criminal Tribes' has not been defined.

4. However, the State and the Central Governments have maintained such lists on the basis of the Notifications issued by Governments under the Criminal Tribes Act, 1924.

5. It seems, some of the Criminal Tribes are settled and some are semi-settled. They seem to have descended from fighting communities and some have been uprooted from their original homes due to political upheavals. The cause for their criminality is psychological, and they love adventure.

6. They eke out a livelihood by hunting, selling jungle produce and medicinal herbs and supplementing their earning by begging and committing crimes. Their criminality is also due to their economic poverty.

7. The first legislative enactment to control the activities and movements of those tribes was Regulation 26 of 1793. A separate

Department called " Thaggi and Decoity Department " was established by the British Government. Subsequently, after the passing of the Indian Penal Code in the year 1860, their movements were curtailed and their activities penalised. Such measures did not have any effect to decrease the crime; instead the Government noticed that crime was still on the increase. So, in 1897 " Criminal Tribes Act " was passed. In 1924, a consolidated Act called the " Criminal Tribes Act of 1924 " was passed.

8. By those enactments certain tribes which were criminal by habit were notified by the State Governments. Their movements were curtailed and they were put in " Settlements " with police surveillance. They were asked to report periodically to the police stations about their movements.

9. After Independence in 1947, the Criminal Tribes Enquiry Committee was appointed in 1949, and as recommended by them the Criminal Tribes Act, 1924, was repealed with effect from 31st August 1952. However, even before the repealment of the 1924 Act the then State of Bombay repealed the said 1924-Act in its application to the Bombay State with effect from 13th August 1949. The 1924 Criminal Tribes Act offended Articles 19, 21 and 22 of the Constitution and the repealing of the 1924-Act was, therefore, necessitated.

10. The Kalelkar Commission says[2] that their status in society is low and they are treated as Untouchables on account of their objectionable mode of life and notoriety. It further states that some of them are considered to be inferior even to sweepers.

11. We do not have sufficient population data about the nomadic and semi-nomadic tribes in Karnataka. However, P. K. Misra, C. R. Rajalaxmi and I. Verghese[3] have written about the Nomads in Mysore City, and in our opinion, the said study, besides being inadequate, does not cover all the Tribes notified by the Government of Karnataka as Nomadic and Semi-nomadic Tribes.

12. The list of Nomadic Tribes and the list of Criminal Tribes overlap each other in respect of some Tribes. We have, however, considered the case of the Criminal and the Nomadic Tribes together.

13. Various Commissions appointed by the Central Government on the study of the problems of the Tribes in India have consistently insisted upon the Central and the State Governments to evolve measures for the rehabilitation of those Tribes. The Kothari Commission on Education has also emphasised the educational upliftment of those Tribes.

14. Some of the tribes belong to Hindu religion and some to Muslim religion.

15. All the Social Welfare Officers and all the witnesses, Hindu, Muslim and Christian, have deposed before the Commission that Nomadic and Criminal Tribes should be categorised separately.

Following the patterns of Bombay (now Maharashtra), Andhra Pradesh and other States, we have grouped together the Nomadic and Semi-nomadic (wandering) and Ex-Criminal Tribes separately. Full statistical data in respect of *some* of these tribes are not available, as all the members of those tribes were not available to the Census authorities from 1871 to 1941 when data had been collected caste-wise and community-wise, for the obvious reason that some of those tribes were living in hills and jungles, some wandering in search of labour. Some are criminal by habit, and some have no fixed place of habitation. They have no traditional occupations as the Scheduled Castes and some of the Scheduled Tribes have. The untouchable Scheduled Castes have traditional occupations like scavenging, leather tanning, shoe making, sweeping, menial services in villages. All the Scheduled Castes live in cities, towns and villages, though some of them are segregated in the outskirts of villages. The occupations of the Scheduled Castes are conventionally known to be inferior and unclean, and so they are considered by the *caste*-Hindus as untouchables. Their population figures were ascertainable in a large measure at the previous Census operations, and even to this day their populations are collected caste-wise, though all the Scheduled Castes and Scheduled Tribes in the State have not been enumerated in the 1961 and 1971 Census. Their economic backwardness was ascertainable at the Census operations, though it has never been a factor that has gone into the specification of the Scheduled Castes by the President under Art. 341 or inclusion of some by Parliament subsequently.

16. Scheduled Tribes, by and large, live in jungles, and are isolated from the rest of the society. They present sociological characteristics peculiar to their own. They could easily be identified and specified by the President of India without any proof of their economic backwardness.

17. But the economic, social, educational and cultural conditions of the nomadic, criminal and begging tribes are *worse* than that of some of the Scheduled Castes and the Scheduled Tribes, though these nomadic, criminal and begging tribes are not untouchables in the conventional sense, and are not forest dwellers. The nomadic, begging and criminal tribes are professional beggars eking out their livelihood by begging in various ways such as carrying the pictures and images of deities, leading the life of mendicants, torturing their own bodies, performing some physical feats, indulging in committing thefts of all kinds in fields, forests etc. Some are highway robbers, fortune tellers, monkey and deer dancers, fowlers, hunters, manufacturers of illicit liquors, cowherds, snake charmers and so on They

have no fixed place of habitation. They do not own land or houses, and some not even huts. Their sojourn in the itinerary is in the dilapidated and abandoned temples and *dharmashalas,* and on the Government or municipal waste lands, or beneath the bushy trees. They are gipsy-like in their life. Some tribes live on deers, rats, monkeys and flesh of dead animals. They stealthily steal from the village, pets like cats and dogs for their food. But these tribes are not Scheduled either under Art. 341 or Art. 342.

18. In almost every State in India, and in our own State, many of the wandering, criminal and begging tribes have been included by the President in the Orders issued under Art. 341 or Art. 342. But some have been left out from the Schedules. It is alleged that one of the reasons why they have been left out was political, in the sense, that the legislators, including the Members of Parliament, of those castes and communities which were already there in the Schedules, did not allow the addition of more castes and tribes to the Schedules. And the other reason was that by inclusion of the remaining wandering, begging and criminal tribes in the Schedules, the population of those classes would be swelled, and to the extent of their increase in population the extent of reservation would also increase. Consequently the strength of advanced communities would be reduced in the State Legislatures, Parliament and in the matter of getting admissions to educational institutions and entry into Government services under Article 15(4) and 16(4). In our own State some of the begging, wandering and criminal communities, or groups of such communities, have been included in the Schedules under Article 341 or Art. 342, but not the other communities or the remaining groups of the same tribe. Some tribes were either Scheduled Castes or Aboriginal Tribes before the coming into force of the Constitution in the year 1950 but they were left out when the Presidential Orders were issued in that year. Some of the tribes which found place in the Schedules of the Presidential Orders of 1950 were excluded later.

19. "The Objects and Reasons" Statements of the Parliamentary Bills passed under Article 341(2) and 342(2) for excluding certain castes and tribes do not assign any satisfactory reasons for their exclusion.

20. The Scheduled Castes are becoming vocal as could be seen from Ambedkar's answer to a question by the Backward Classes Commission appointed by the President in 1953.[4]

Dr. Ambedkar:—

> After that give them (the backward classes) service in Government Department. I would be quite prepared to spend one crore of rupees for the backward classes, one crore of rupees for the Scheduled Castes and one crore for the Scheduled Tribes

for 10 years and *probobly the Scheduled Caste problem may end much sooner...The Scheduled Castes are becoming vocal now.* Thus you will create a few people with higher qualification and place them in high posts. That will be 2000 times better than the 2,000 boys educated in Marathi or Gujarathi.

21. The extremely backward classes, namely, the begging tribes, the wandering tribes and the criminal tribes are not at all vocal. The vested interests also have played their role in depriving those tribes of the educational and other benefits, leave aside the political benefits.

22. Indeed, N. Rachaiah,[5] the present Minister for Social Welfare, also the Minister for Social Welfare during 1958-1962, declared on 5th July 1958 at Raibag, Belgaum District, that " Government have been considering the question of treating you, Ex-Criminal Tribes, as Scheduled Tribes so that you may also get the special benefits envisaged for this class of people under the Constitution. A decision will be taken on this soon, and to be frank with you, personally, I am in favour of it."

23. Devaraj Urs[6] the then President, Mysore Pradesh Congress Committee, now the Chief Minister of Karnataka, stated at Hubli on 16th May 1971 that all the ex-criminal tribes deserved to be included in the Schedule under Art. 342 and that steps would be taken for their inclusion in the Schedule under Article 342.

24. Those tribes being nomadic, criminal, and begging in character, full data cannot be available to satisfy the tests suggested by the judiciary even if ten or more commissions are appointed to study their problems. As is done in the case of Scheduled Castes and Scheduled Tribes, while recommending them to be included in the Schedules under Articles 341 and 342, as the case may be, the State Government should straightaway declare the wandering tribes, the begging tribes and criminal tribes as a separate category amongst the ' Other Backward Classes '. We believe, judiciary would not be rigid to insist upon the Government to prove the backwardness of those tribes, for aught we know that judges being drawn from our own society, cannot afford to be blind to the realities of our society.

25. The wandering, the begging and the criminal tribes were shown by the Kalelkar Commission by asterisk marks as being *extremely* backward and the Mysore Backward Classes Committee appointed in 1960 had also shown them to be backward in its interim report, and " more backward " in its final report. The Mysore High Court[7] had to observe, obviously referring to those tribes, that the State Government should have declared at least such communities as ' Backward '.

26. The said tribes are far more backward than some of the castes and tribes presently included by the President in the Schedules under Art. 341 and Art. 342. Though Justice Gajendragadkar said in Balaji case that the Other Backward Classes are similar to Scheduled Castes and Scheduled Tribes in the matter of their backwardness, the begging tribes, the wandering tribes and the criminal tribes that we have specified separately are far more backward than some of the Scheduled Castes and Scheduled Tribes presently notified by the President under Article 341 and Article 342. The Nomadic Tribes and Denotified Tribes are halfway to untouchability and semi-inarticulate. They suffer from the stigma of criminality and begging. There are no members of the Village Panchayats, Municipal Councils and Co-operatives belonging to those tribes. Majority members of these tribes are not even voters at any elections.

27. The Commissioner for Scheduled Castes and Scheduled Tribes has, in almost every of his Reports, recommended for the ameliorative measures to be adopted by the State Government in favour of the nomadic tribes, begging tribes and criminal tribes. Although the previous Governments have described them by various Orders as extremely backward, socially, educationally and economically, no special provisions were made for them under Articles 15(4) and Art. 16(4).

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CHAPTER XXVIII

CENSUS AND CASTE

The first ever Census in the world known to history was taken in Egypt seven thousand years ago. Hebrews were taking Census regularly, and during the time of Exodus, Moses conducted Census of Israel in 2500 B.C. Census was a regular necessity in ancient Greece and Rome for conferring citizenship rights. For electoral purposes Athens commenced conducting Census in 594 B.C. China and Mesopotamia conducted periodical Censuses during 400 B.C.

2. Quebec province in Canada bags the credit for the first modern census it conducted in 1666. From that year it took regular censuses, once in every six years. Sweden, Spain, France, England and Norway have been taking Census from the 18th Century. United States in 1790 and Russia in 1897 adopted Census on modern and scientific lines.

3. In India, for the first time in her history, attempts were made during 1867-72 to ascertain the essential characteristics of her population.

4. When the Draft Constitution was prepared in the year 1947-48 provision was made for reservation of seats in Legislatures and Parliament in favour of Scheduled Castes, Scheduled Tribes, Muslims, Christians and Sikhs. Provision was also made for reservation of posts in Government services to those minorities and also to the backward classes. However, in the Constitution finally adopted by the Constituent Assembly, reservation in State Legislatures and Parliament were provided only to the Scheduled Castes and Scheduled Tribes and nomination to the Anglo-Indian community. Before the Constitution came to be finally adopted, the University Education Commission of which S. Radhakrishnan was the Chairman, also a member of the Constituent Assembly, observed on page 52 of its report that " there is much to be said for the suggestion that the information about caste and religion should not be asked for from candidates seeking admission for Colleges and Universities". Before the commencement of the 1951 Census operations, at a Conference convened in 1950, Sardar Vallabhai Patel said in his address " formerly there used to be elaborate caste tables which were required in India partly to satisfy the theory that it was a caste-ridden country and partly to meet the needs of administrative measures which depended upon caste division. In the fourthcoming census this will no longer be a permanent feature". Even before Sardar Vallabhai

expressed such an opinion, G. S. Ghurye wrote in his book ' *Caste and Class in India* ', 1950—*page* 205 that " the true remedy against the evil of caste is to fight caste patriotism on all fronts. In order to diminish caste loyalty the first step that we should take is to ignore it altogether. The State should make it clear by its action that it does not recognise caste as caste *though its individual members may be guided by its group existence.* It ought forthwith cease making any enquiry about a citizen's caste. Caste must be regarded as a *purely individual concern* with which the said national organisation should have nothing to do. Neither in the official records nor in the application nor in statistical returns must the caste of the citizens be recorded. The Census need not busy itself with recording the caste of individuals nor should it present any tables by caste ".

5. P. B. Gajendragadkar, Retired Chief Justice of India, who later became the Chairman of the Jammu and Kashmir Commission of Inquiry in 1968, suggested that so far as Hindus were concerned the criterion of backwardness is *caste,* and expressed his disapproval that ' it is unfortunate that the State Government do not maintain a separate record of admissions of students belonging to the backward classes ". The Directive Principles of State Policy give a mandate for their educational and economic upliftment and for prevention of their exploitation. He, therefore, expressed his unhappiness on his inability to make any observation as to the extent to which the State Government had followed the directive principles intended for the advancement of the backward classes.

6. Perhaps, it is because of the opinions of Radhakrishnan, Sardar Vallabhai Patel, Ghurye and others the Union Government omitted collecting statistics of Hindu castes, though it has enumerated the particulars of religious and denominational sections.

7. After the coming into force of the Constitution it is said that because Articles 15, 16 and 29(2) prohibit the State from making discrimination against any citizen on grounds only of religion, race, *caste,* sex, place of birth, descent, language and residence, the Central Government was right in abolishing caste enumeration and doing away with the collection of sociological, social, economic and educational data of the various castes in the Census Reports. This argument has been welcomed by a section of the society including the educated. It is no doubt true that Articles 15, 16 and 29(2) Prohibit discrimination against a citizen on the ground, *inter alia,* of caste in matters relating to access to shops, public restaurants, hotels, places of public entertainment and use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the State funds or dedicated to the use of the general public ; in matters relating to employment or offices under the State and admissions to educational institutions. We have got to examine the correctness or the *bona fides* of such an assertion. It is to be noted that Articles 15, 16 and 29(2)

prohibit the State from making discrimination against any citizen on grounds not only of caste, but also of religion, race, sex, place of birth, descent, residence and language. Have the religions, castes, races, languages etc., ceased to exist because of prohibition of discrimination ? One fails to understand the logic of the contention that the abolition of caste particulars in Census was right, when other particulars relating to religion, race, sex, place of birth, descent and language are enumerated in the Census. The logic or the reason that is applied in the abolition of caste-particulars should also have been applied in matters relating to religion, race, sex, place of birth, descent and language. What is the justification in the enumeration of religious groups like Muslims, Christians, Jains, Buddhists and Sikhs ? What is the justification in the enumeration of males and females ? What is the justification in the enumeration of people on the ground of their place of residence in urban and rural areas ? What is the justification in the enumeration of people belonging to different racial groups like Scheduled Castes and Scheduled Tribes ? What is the justification in the enumeration of people of peculiar descent like Anglo-Indians ? Further what is the justification to mention the similarly prohibited aspects of religion, race, sex, place of birth, residence and descent in the Birth and Death Registers, in the Admission Registers of Schools and Colleges and in the service registers of Government Servants ? Have they not made people conscious of their religion, sex, race and language ? Is it not discriminatory against Hindu castes if particulars of castes are not enumerated ? It is also argued by some that caste-system has been abolished by the Constitution, and that therefore, caste-particulars should not find a place in the Census Reports. We would only say that they are either misguided or are calculated in their argument. Neither the Constitution nor any law has abolished the caste system. We go a step further and say that the Consitution and the laws in India have recognised the caste system and they intend continuing the Hindu caste system.

8. Articles 15(4), 16(4), 46, Part XVI, Articles 366 (24, 25 and 2), 341 and 342 of the Constitution make specific reference to castes, tribes and communities. Article 16(5) makes it a fundamental right that the incumbent to an office in connection with the affairs of a religious or denominational institution shall be a person professing that particular religion or shall be a person belonging to that particular religious denomination.

9. Articles 26, 27, 28, 29 and 30 give fundamental rights to religious communities, whether major or minor to establish and maintain religious institutions ; to manage the affairs of their religious institutions ; to acquire property ; to give religious instructions etc. Similarly, linguistic minorities have been given fundamental right to establish and administer educational institutions of their own. The Untouchability (Offences) Act, 1955, has recognised

the existence of castes amongst Hindus, and imposition of any disability is made an offence. The traditional Hindu Law has been codified to a certain extent. The codification of the Hindu law relates to marriage, succession, minority and guardianship, and adoption and maintenance. All those codified Hindu Laws recognise the existence of different religious denominations, like Veerashaiva, Lingayat, Brahmo, Prarthana, or Arya Samaj, Buddhist, Jain and Sikh, the racial and tribal communities and their groups, and other communal groups in the application of those codified laws or in the application of the custom or usage peculiar to those denominations, tribes, communities and communal groups. The Indian Penal Code, by Section 153-A recognises the existence of castes amongst Hindus and Section 499 IPC makes it an offence to call a *caste*-Hindu an outcaste. The Code of Civil Procedure and the Specific Relief Act have given power to the civil courts to declare the caste-status of a person. Similarly, the Evidence Act, by Sections 32 and 48, recognises the existence of certain customs and usages amongst Hindu caste groups. These are only a few of the statutory enactments which immediately occur to our mind.

10. Part X of the Constitution relates to the making of special provision for the administration of the racial communities and tribes belonging alike to Hindu and non-Hindu communities.

11. The President's Backward Classes Commission recommended for conducting the 1961 Census securing information, *inter alia*, of Hindu castes and tribes. Kaka Kalelkar, the Chairman of the President's Commission, in his covering letter expressed doubts as to the efficacy and correctness of the information that would be given by the people as to their castes. He said that there was no law preventing a Brahmin giving out his caste as a Harijan or a Harijan giving out his caste as a Brahmin. He quoted the story of a great sage, *Valmiki*, who was said to be a Brahmin and who later became a fisherman and joined the ranks of the high-way-men indulging in committing crimes. So, the Chairman expressed that any Brahmin can easily take Valmiki as his *surname*. He also said that fishermen can call themselves Valmiki and so too the criminal tribes. He said that some of the scavenging castes also call themselves Valmiki. On this account the Chairman posed a querry "now, what are the Census authorities to do ? And what is the Department of Education also to do?" In the end he expressed that "the confusion and anarchy of opinion about all communal matters is going to make the work of the Census well nigh impossible".

12. Although the President's Commission had recommended for collection of caste statistics at the 1961 Census, it is perhaps because of the Chairman's expression of doubt that such particulars have been omitted in 1961 and 1971 Census. What was predicted by the Chairman Kaka Kalelkar about the Brahmins voluntarily

going by the Harijan caste appears to have been taken as a suggestion to some of the advanced castes, and complaints have been received by us that some advanced castes and communities by obtaining certificates from authorities that they belong to either a Scheduled Caste or a Scheduled Tribe, secured benefits of admission to educational institutions and entry into Government services.

13. Such instances are very rare and exceptional and on that account we do not find any valid reason for abolition of caste particulars in the Census Reports. Law should provide for preventing false claims. When the other laws like the Hindu Succession Act, the Hindu Marriage Act, the Hindu Guardians and Wards Act etc., recognise the existence of castes and tribes and communities amongst Hindus and when the Constitution imposes a duty of a fundamental nature on the State and the Central Governments to uplift the backward castes, the suggestions made by Chairman Kaka Kalelkar would perpetuate and aggravate inequalities.

14. For the first time in India Census with caste particulars was conducted in 1867-72. When castes have been with us for thousands of years, enumeration of caste particulars in the Census cannot make us caste conscious. We have been " caste conscious " for thousands of years, even when census was never taken earlier to 1867-72. Indeed, the enumeration of caste particulars in the Census would reveal the disabilities under which certain castes have been suffering, their economic and social backwardness and so on. Perhaps those who want to preserve the *status quo* of social disabilities, distinctions and injustice are frightened that revealing of those particulars will make the backward classes ' conscious of their backwardness ' and the inequalities under which they are suffering. To prevent the backward classes claiming adequate share in the national wealth these excuses appear to have been put forth by the advanced sections.

15. That omission of caste enumeration in Census Reports does not make people caste-conscious looks equally amusing and absurd as when a merchant omits labelling grain bags to prevent bandicoots from eating the grains. We are unable to say how Kalelkar explains his statement that caste loyalities have increased after Independence, though the Census has omitted caste enumeration. After all, Census Reports are published only once in ten years with a few hundred or thousand copies. Who, and how many, read them? Only a couple of social scientists, economists, planners and administrators go through them. Such persons are to be counted only on fingers out of 560 million people of India.

16. If caste particulars are not enumerated in the Census Reports the mentioning of other particulars relating to religion etc., could be challenged as being discriminatory, and the omission of caste as being actuated by *mala fides*. If the Central Government declines

to adopt the old method of enumerating caste particulars in the Census Reports, it is no wonder the backward Hindu castes may prefer to embrace Islam or Christianity which do not recognise caste system. The increase in the population of Muslims and Christians, who now number about 13 per cent of the State population, should be an eye-opener to the advanced sections amongst Hindus. When at a time India was inhabited by hundred per cent Hindus the microscopic minority of Muslims coming from outside India ruled the whole country. When India was inhabited by Hindus and Muslims, a still considerable minority community of Christians coming from the distant West ruled both Hindus and Muslims. The majority of the present Muslims and Christians were the original Hindus. If the advanced sections amongst Hindus consider that abolition of caste particulars in Census Reports would eliminate caste groups, we would say that the backward Hindus are likely to achieve it by leaving Hinduism.

17. At the Census enquiry, a male may give his sex as female and *vice-versa*. A person with a particular language as his mother-tongue may give another language as his mother-tongue. A person, though residing in urban area, may inform the Census authorities that he was residing in rural areas. If, as said by Chairman Kaka Kalelkar, there is no law preventing a person from giving caste different from the one to which he belongs, there is, similarly, no law preventing a person from giving different sex, different language and different place of residence. Why not then columns relating to sex, language and place of birth be omitted?

18. About one's literacy, occupation and income also, the same argument holds good.

19. After the reorganisation of the States in November 1956, the Census authorities were directed by the States Reorganisation Act, 1956, to conduct census and obtain the population of Scheduled Castes and Scheduled Tribes. In 1961 and 1971 Census, the populations of Scheduled Castes and Scheduled Tribes have been obtained. But the Census Reports of 1961 and 1971 do not mention any person falsely passing himself off as a Scheduled Caste man or as a Scheduled Tribe man. So, the fears expressed by Kaka Kalelkar are only imaginary.

20. Even so, exceptional cases of that kind may occur very rarely. We hear of persons evading tax, impersonating at the elections, committing crime inspite of the existence of Police Force and the prohibition of such commissions. Some of the officers of the Government accept bribe. Could it be said that on account of the occurrence of such rare instances we should avoid impossition of tax, establishment of Police Force, holding elections and the Government

establishment? Article 16(5) prescribes that the incumbent to an office of a religious institution shall be a person belonging to that religious denomination. When according to Chairman Kaka Kalelkar a Harijan could claim himself to be a Brahmin, could a Harijan be tolerated by the caste-Hindus if he tries to occupy an office in a Brahmin religious institution? Would the Christian tolerate a Muslim and *vice versa,* or would the Hindus tolerate a Christian or a Muslim claiming to be a Hindu for the purpose of Article 16(5)?

21. The Preamble to our Constitution, Arts. 15, 16, 17, 19(5), 23, 46, 244, 244A, and all the Articles in Part XVI of the Constitution relate to the making of special provisions to the Scheduled Castes, Scheduled Tribes, Anglo-Indian community, other Backward Classes and the religious and other denominations. Article 46 imposes an obligation on the State to protect the weaker sections of the society, including the Scheduled Castes and Scheduled Tribes. Similarly, Art. 38 imposes a duty upon the State to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all *institutions* of the national life. Religion and caste are ancient institutions of our national life. If particulars relating to castes, tribes and communitits are to be avoided in the Census Reports we would be committing a fraud on the people of India.

22. Continuous exploitation by the upper classes in religious, social, economic and political fields make them insensitive to the hopes and aspirations of the weaker sections. When one traverses into religious, sociological, psychological and economic history of our society one is apt to notice the resistance by the upper classes to the new changes. Organised Hindu revivalism has arisen. Efforts are being made to prevent structural changes in society to preserve in tact the fossilised Hindu society. Valiant efforts have been made to defend Hindu caste-structures, customs and traditions but the Hindus did not care much to defend India's national territory. Dry generalisations on isolated instances and imginary fears of the upper classes make it impossible for us to be not offending them when we are forced to say that theirs is the revivalistic ideology and behaviour. If people are honest in their opinion and approach as claimed by them for doing away the caste system, we appeal to them to cause introduction of a Bill in Parliament annihilating caste. Our Constitution and other statutes will then be reduced to one-half of their present size.

23. In 1891 the population of the present territory of India was 236 million. Thirty years after, in 1921, the increase of population was only by 15 million. In the next period of 30 years, the population increase will be not by 15 million but, by 110 million. During the period of 20 years between 1951 and 1971 the increase is by 78.1 million. India possesses only 2.4 per cent of the land area of the world, but has 15 per cent of the world's population.

Each day 55,000 babies add to the population making an increase of 21 million a year. Excluding 8 million deaths a year, we are adding 13 million every year to our population.

24. Demography means vital statistics illustrating social, economic, political, educational and religious conditions of groups and communities inhabiting the land. Since 1951, Census in India has been only a mechanical process of counting heads on the basis of their religion ignoring caste particulars of Hindus and vital statistics. It has lost its real meaning and significance.

25. Has the Census made efforts to know the rate of increase or decrease of each Hindu caste or denomination, or its socio-economic conditions ? It is not the duty of the Central Government to collect basic statistics (' Census ' is a subject coming under the Union List) for evolving a policy to tackle their problem—a national problem ? Are the administrators sincere and honest to undertake measures to implement the Directive Principles of State Policy, which are a fundamental duty of the State ? Are they sincere in uplifting the weaker sections who are socially, economically and educationally backward ?

26. Consequently, the Central Government have failed in their fundamental duty in regard to backward classes, and the required measures have not been implemented to uplift them. Efforts should be made by the Legislators to get the subject of ' Census ' transferred from the Union to the State List, if the Union Government does not collect caste particulars.

27. Maintaining castes but only omitting their enumeration in the Census will not bring about a society of equals. To use the words of Ambedkar we would be " more like raising a palace on dung-hill ". The upper castes amongst Hindus have not realised that the backward classes are a source of potential danger. If the Hindu backward classes remain savages they may not commit any harm to the Hindus. But, the warning Ambedkar gave, namely, " if they are reclaimed by non-Hindus and converted to their faiths they will swell the ranks of the enemies of the Hindus. When this happens a Hindu will have to thank himself and his caste system ", should open the eyes of the Hindus.

CHAPTER XXIX

DRINK EVIL AND ITS PROHIBITION

1. Indian society has been facing many problems. Like the hoary institution of caste, evil of drink is equally the oldest and the greatest one. Both the evils are steeped in antiquity.

2. *Sukracharya* appears to have been one of the first to promulgate total prohibition.[1] People in the past were not free from the drinking habit. *Max Muller* states that the greatest vice of the Aryan race in India, besides gambling, was drink. Ancient Sanskrit literature contains innumerable passages to show this weakness of our ancestors. *Rigveda Samhita* shows that " Wine was kept in leather bottles and freely sold to all comers ".[2] It seems that almost every civilisation notices its society being held in the grip of the vice of drink. Even so, the aborigines also employ intoxicants of different types whenever a deity is to be propitiated, a marriage to be performed, a death to be mourned, a war against another tribe to be waged and a peace to be made. Though the discovery and art of manufacturing intoxicant liquors or drugs is the out-come of settled habits, the aborigines are not ignorant of such an art. It is not necessary for our purpose to know whether or not the Aryans knew the art of manufacturing intoxicants before they came to India.

3. Eran worshipped *Haoma,* and at that time India also appeared to have obtained similar habit, from its neighbouring Eran, of worshipping *Soma. Rigveda* is replete with instances in praise of *Soma.*[3] The worship of *Soma* and the Moon God go together. Indeed, *Soma* was identified with all deities. " A man who is initiated (into the sacrificial mysteries) offers himself to all deities. *Agni* represents all deities and *Soma* represents all deities ".[4]

4. Procedure for the preparation of intoxicating liquor like Soma was prescribed. Prof. Rigozin [5] states of the fieriness of the drink, its exhilarating and inspiring properties. Only the chosen few, the Brahmins, used to take it. *Soma* intensified vitality and raised them above the level of humanity.

5. Simmonds [6] states that " there is little doubt that distilled alcoholic beverages like arrack or toddy have been known in India since at least 800 B.C. and in Ceylon from time immemorial ".

6. It is, however, to be remembered that succeeding legislations and customs brought about a change condemning the habit of drink as a low vice. Even so, the use of liquors was confined to the

people of the lowest social scale. Though in the beginning the Aryans indulged in spirituous liquors, even to excess, they soon realised the evil consequences and painful results the habit produced. The Aryans in later periods repressed the growing habit of drinking. That they did so is clear from the later *Vedas.*

7. They prohibited the use of spirits for the gratification of the senses. The Aryans said: "Wine is unfit to be drunk, unfit to be given, unfit to be accepted." The later *Vedas,* however, did not totally prohibit the consumption of intoxicants. They effected a sort of compromise by sanctioning the use of liquors at sacrificial functions and at some ceremonials and occasions only, while at the same time totally condemning its common usage.

8. When we come to the age of *Manu* the use of liquors was totally condemned.[7] He laid down law for prevention of drinking, for according to him, drinking was one of the most pernicious vices of the King. *Manu* advised the King to banish the sellers of liquor and to brand the drinker on his forehead with a sign of the Wine-cup. For the twice-born, like a Brahmin, drinking was a mortal sin. A twice-born who consumed spirituous liquors was excluded from all fellowship at meals, all sacrificial instructions, matrimonial alliances and all religious duties.[8] A drinker was to be cast off by his paternal and maternal relations and receive neither compassion nor salvation.[9] *Manu* laid down death as the only penalty.[10] He denounced the women also. To share her couch was considered an offence.[11] The law was that at her death, the performance of llibations was prohibited.[12] *Manu* said that a woman who drank liquor would descend into the body of a jackal or a low animal, or would be born in Hell. He prohibited people taking food from intoxicated persons. Further, a seller of spirituous liquors had no right to realise the money due from others.[13]

9. The injunctions of *Manu* extended to the avoidance of a seller of *Soma* at the sacrifices offered to *Gods.*[14] It is seen that while the previous moralists had permitted use of liquors for religious purposes, *Manu* totally prohibited the use of liquors, even at the religious ceremonies. Persons who sold liquor and who drank liquor were given *low status.*

10. *Manu* was not the only legislator of the olden days to have opposed drink. *Apastamba, Gautama* and the *Institutes* of *Vishnu* declared that all intoxicating liquors were forbidden.

11. The penance prescribed for a drinker of spirituous liquor was that he should exceedingly take liquor so that he died.[15] According to *Gautama,* a Brahmin could be purified only after death.[16] When a Brahmin drank unintentionally he had to undergo a penance of living three days on hot milk, clarified butter and water

and inhale hot air.[17] The *Institutes* of *Vishnu* declared that even the selling of spirituous liquor was a crime.[18]

12. Inspite of such a rigorous prohibiting laws, we find frequent references to drinking in the *Mahabharatha* and *Ramayana.* Baldev, Krishna and Arjuna indulged in drinking in the company of their wives, daughters and sisters.[19]

13. *Bharadwaja* is said to have offered, in his hospitality, wine to Bharata and his soldiers.[20]

14. Similarly, Sita was said to have offered to Goddess Yamuna thousand jars of arrack and cooked flesh-meat.

14. From this it is evident that *Manu* was not able to succeed in uprooting drinking from the land. He was, however, successful in removing the sacro-sanctimonious quality of the drink and stamped it as low and pernicious.

15. *Markandeya Purana*[21] equates a drunkard to the murderer of a Brahmin, and consigns both the drinker and the murderer to Hell. *Manu* dubbed the vice of drinking as one of the seven mortal sins (*Mahapatakas*) prescribing severest punihment. *Yajnavalka* similarly laid down harsh punishment for drinking.

16. *Kautilya* in his *Artha Sastra* imposed restrictions on liquor traffic and banned drinking in army camps. Buddhist literature contains examples galore of the importance of abstinence and the evil dangers of drinking. It must be noted that the terrorism of *Manu* failed while the love of Buddha succeeded in inducing the people to abstain from drink. By the time of Asoka drinking had diminished to a very infinitesimal proportion that there were no drinkers at all. Fa-Hein, who came to India in 399 A.D., exclaimed with pleasure that 'the people in this country kill no living creature nor do they take intoxicating liquors..... They do not deal in dead animals, nor are there shambles or wine shops round the market.'[22]

17. Muslims too regard intoxicant as evil, and stigmatise the drinker as a sinner, although we do not find support for this in the *Koran.* Perhaps, drinking was not common amongst Arabs and so we do not find the condemnation of a drinker in the *Koran.* It is said that Alla-u-Din-Kilji used to indulge in wine to excess, and so, the drinking habit impaired his efficiency. Because of the remorse, he gave up drinking. He prohibited the selling and drinking of wine and other intoxicating drugs. Some historians are of the opinion that Muslim Rule helped, rather than retarded, the habit of drinking. But, it must be stated that the habit of drink was confined to the rich classes only and the drinking habit with the masses was not common enough to be noticed.

18. The advent of the British provided a stimulus for intemperance. The habits of the employees of the East India Company were condemnable, their lives were riotous. The Company in its passion for money looked upon Excise as a source of revenue and encouraged the drinking habits with the natives. The Company devised various ways and means for increasing the revenue unmindful of the evil effects of its policy. The policy followed by the British was that they had no desire to interfere with the habits of those who used alcohol in moderation. Therefore, the then Government was of the opinion that it should make adequate provision for the sake of persons whose habit was to take alcohol. In other words, the policy of the Government was not to combat the drink evil or to stop the traffic in liquor. As far back as 1899 the Government laid down certain principles in regard to Excise Policy, of which the imposition of high taxes on liquors was one with a view to raise maximum revenue. By such policies the number of Saloons and Bars had reached a scandalous proportion. Bars, Taverns and Saloons were profusely opened all over the country and in large cities providing the people under their very nose temptation to consume liquor at every turn of the road. The Government raised the revenue on the manufacture and sale of intoxicating liquors, sale of foreign liquors imported from abroad, tapping of trees and sale of toddy, manufacture and sale of opium and its preparations, manufacture and sale of hemp drugs and manufacture and sale of narcotics, and the licences. The huge increase in consumption of the intoxicants was the result of the Government's efforts to increase its revenue from the people's vice and the nefarious traffic in intoxicants.

19. The Indian people experienced that the drink habit leads men to neglect their families, it makes them forget their social duties, and that it creates distaste for work and forces them to commit crimes; that it causes a variety of deadly diseases. Alcoholism is a worst frightful scourge, not only from the point of view of the health of the individual, or the existence of the family, but also from the point of view of the future of the country. It makes people irreligious and morally degenerated.

20. Hume, the founding father of the Indian National Congress, Keshab Chandra Sen, founder of Brahmo Samaj and a number of veterans, like Raja Ram Mohan Roy, Gopala Krishna Gokale, Bal Gangadhar Tilak and Mahatma Gandhi violently condemned the Government's ill-conceived excise policy of raising its revenue. They denounced the liquor revenue as the ' wages of sin ' and as ' tainted money '. They declared total abstinence as one of the four essential pre-requisites of country's social, political, moral and material regeneration. And the Indian National Congress started picketting liquor bars and drug shops.

21. American society was wrecked by the intemperate habits of its people, and so it introduced total prohibition and had come

to know the benefits of prohibition. Liquor addicts who always used to be in debts, paid them promptly, they used to take home the wages that were wasted in bars ; their wives and children were clothed better and fed better ; their savings increased in the Banks ; and their sobreity increased. Individual and national efficiency increased. States and Municipalities were saving money upon the establishments of Police and Jails ; sobriety was promoting the family happiness ; value of properties was increasing ; human efficiency was increasing ; public life which was corrupted on account of drink habit was cleansed and corruption disappeared. Having known the benefits America derived from the policy of prohibition, the Indian National Congress and other parties insisted upon the Government to save the citizens from the evil temptation of alcoholic liquors and intoximating drugs. Some Princely States introduced partial prohibition in their respective States, and when provincial autonomy was inaugurated in 1937 as a consequence of which popular ministries were installed, prohibition was introduced in those Provinces. On account of the Congress ministries resigning in the Provinces, the successor Governments in those Provinces annulled the prohibition laws.

22. The founding fathers of the Indian Constitution, being convinced that prohibition was necessary to improve the level of nutrition, standard of living and health of the people, enjoined on the State by Art. 47 a fundamental duty to bring about prohibition of consumption of intoxicating drinks and drugs which are injurious to health.

Mahatma Gandhi declared 'drink to be more damnable than thieving and perhaps even prostitution'. Alcoholism is one of the most prevalent, destructive, costly and tragic forms of illness. It produces unhappy marriages, broken homes, desertion, divorce, impoverished families and depraved or displaced children.[23]

23. The major part of excise revenue is collected from the consumers of toddy and country liquor, and they are from the poor sections of society.[24] Alcoholism affects the moral values of the weaker sections of society like the Scheduled Castes, Scheduled Tribes and other backward classes, and it affects their economic condition.[25]

24. Failure on the part of the State to introduce Prohibition is due to the 'liquor interests' campaigning against prohibition. They encourage illicit distillation and pull wires to secure their objective.

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CHAPTER XXX

BACKWARDNESS AND MEASURES FOR ITS REMOVAL

Economic equality and social justice could be attained by maximum production and change of the present socio-economic structure of our society. The said objectives cannot be attained without the implementation of the directive principles contained in Part IV of the Constitution. The present educational system and industrial policy have disrupted the village economy. The decay of rural industries has also contributed to the backwardness of large sections of the people in rural areas. Primitive form of cultivation of land, lack or inadequate facilities for education, unemployment and under-employment have been the causes for poverty of the rural communities. Use of improved equipment and training in modern methods of production should be encouraged. The village and cottage industries should be revived. To relieve the pressure on land, which is not adequate to employ all the rural communities, rural and cottage industries should be encouraged. The administrative set up entrusted with the task of implementing the welfare measures requires a complete re-orientation. Educated persons from the Backward Classes should be recruited in large numbers to the services to bring about social contact with the masses.

Peasant communities:

2. The economic and living conditions of the peasant communities are very unsatisfactory. They need all help in greater measure so that their economic and living conditions could be improved. Irrigational schemes, such as Minor Irrigation and Lift Irrigation, where Major Irrigation is not feasible, should be started throughout the State and facilities to sink irrigation wells in small land-holdings should be provided.

3. The fixation of land tax is very arbitrary, and in many cases, particularly in the case of uneconomic holdings, the levy of tax is oppressive. Land tax is not assessed on the capacity of the cultivator to pay the tax. All lands which are only rain-fed should be exempted from the levy of land tax, and in the case of irrigated lands equitable system of tax be evolved.

4. In our State there are certain castes like the Tigalas and Yeligars engaged mainly in the cultivation of vegetables, flowers and betel vine. Enough land should be made available for them around towns and cities to grow vegetables, flowers and betel vine. They should be encouraged to form co-operatives.

Livestock :

5. Cattle is considered a form of wealth by all agricultural communities. Bullocks are generally motive power for all agricultural operations and even for transportation of agricultural produce from the land to the village, and from the village to the market place. The economic prosperity of the agricultural communities depends upon the development of livestock. Cattle breeding stations to improve the cattle breed, and also to improve the milk yielding quality of cows and she-buffaloes, should be established in sufficient numbers. The local breeders should be encouraged to improve their stock. Veterinary Institutions should be established in almost every village.

Dairying :

6. Almost every agricultural family could be considered a small dairy. It gives an additional income to the agriculturists. Every village should have a small or a big dairy, depending upon the cattle wealth of the village. Milk Producers' Co-operative Societies or Unions be given adequate monetary help.

Piggery :

7. Some of the low castes are engaged in pig rearing. Those castes are mostly nomadic. They should be encouraged in pig rearing, and they must be made to lead a settled life.

Fisheries :

8. A good number of small communities in Karnataka are engaged in inland-fishing and in sea-fishing. Besides, some of them are engaged in plying boats and ferries. Their economic and living conditions are unsatisfactory and they lead a very hard and strenuous life. Fish could meet the food storage. Fisheries should be developed by organising multi-purpose co-operatives. Co-operatives for the manufacture of boats and nets should be started, and through them boats and nets be supplied to the fishermen. Wherever feasible, particularly in the coastal areas, steam launches should be employed for fishing. Facilities for preservation of fish should also be afforded to the fishermen.

Agricultural labour :

9. The decay of cottage and rural industries has contributed to the increase in the agricultural labour force. Large majority of them are either casual workers, or are unemployed for four to six months in a year. It is a most vulnerable section of our society, and it needs earnest consideration of the Government. Cottage and rural industries should be revived, and agriculture should be encouraged to afford opportunities for employment of those communities. Surplus land resumed by the Government and the Government land

should be distributed to the landless labourers. All facilities granted to industrial labour should be extended to agricultural labour also.

Development of industries :

10. Cottage and village industries cannot compete with heavy industries. Backward castes and communities are, by and large, employed as unskilled labour. Industries in the public sector should train members of the backward castes and communities to absorb larger number of their members. Training courses should be started in all industrial establishments.

11. The economic conditions of the castes and communities engaged in rural and cottage industries are unsatisfactory. Some of the policy makers are of the opinion that the rural and cottage industries have no capacity to survive, and so they are not evincing interest in the development of rural and cottage industries. In the industries run by the Government, the supervisory, administrative and technical staff should be drawn from the backward castes and communities whose traditional occupations are any of the rural and cottage industries. Hand-spinning and hand-weaving have been the traditional village industry. Employment potential of this industry is large. It can absorb sufficiently good number of poorer sections in the rural areas. There is scope for development of hand-spinning and hand-weaving industry.

Handloom industry :

12. Growth of textile mill industry has adversely affected the handloom industry. Handloom industry in Karnataka occupies an important place in the economy of our State. Inspite of the establishment of large number of textile mill industries, handloom industry has survived. Sufficiently good number of people are supported by this industry. Unfair competition between the textile mill industry and the handloom industry should be prevented. Government should demarcate spheres of production for handloom industry. Regular and sufficient supply of yarn of required count, quantity and colours should be ensured to the handloom industry. All the weavers should be encouraged to form co-operatives so that they could be prevented from exploitation by middlemen and master-weavers. Marketing facilities should be provided throughout the State and throughout the country. Foreign markets for handloom fabrics should be captured, and the industries run by the Government should purchase only the handloom products. Financial assistance in the form of loans and subsidies should be given for improvement of the looms. Wherever necessary weavers' colonies should be established. Cotton cultivation should also be encouraged.

Silk industry :

13. Weavers employed in silk handloom industry are also facing competition from the textile mills. As in the case of cotton handloom industry, silk yarn in adequate quantity should also be supplied to silk handloom weavers. The Handloom Board should draw up measures for improvement of the economic conditions of the cotton and silk handloom weavers.

Sericulture :

14. In some parts of Karnataka sericulture gives subsidiary employment to the agricultural communities. There is abundant scope for expansion and improvement in the production of silk.

Wool spinning and weaving industry :

15. Majority of the people engaged in wool spinning and wool weaving industry in Karnataka are from the Kuruba (Shepherd) caste who are found throught the State except the coastal areas. There is great demand for woollen blankets from the agricultural and rural communities. This industry also is decaying as a result of competition from the woollen mills. Wool Board should encourage the development of the industry on co-operative lines, and improve the marketing facilities. Modern techniques in the production of blankets and other woollen goods should be introduced. Government should purchase woollen blankets and other woollen products from the Board to supply the needs of the Police Force, Hospitals, Home Gaurds, Jails etc.

Village oil industry :

16. In Karnataka the Ganigas (Oil Pressers) are mostly engaged in the village oil industry. Here again, oil mill industry has greatly affected the village oil industry. Karnataka produces various kinds of oil seeds like groundnut in large quantities. Village oil industry is finding it difficult to sustain itself in the face of competition from oil mill industry. A separate Board should be constituted to study the problems the village oil industry is facing and to improve the said industry.

Pottery :

17. The village potter (Kumbara) supplies earthen vessels to the village community. There is no scope for the improvement of this industry by employing modern machinery. Since the earthen vessels are of cheaper variety used mostly by the poorer sections, there is no hope for the potter to improve his economic conditions. However, not only to preserve the traditional art of making earthen vessels and earthenware but also to improve the economic conditions of the potters, Government should encourage the traditional potters in producing artistic and elegant earthenware.

Bomboo and cane workers:

18. Bamboo and cane workers are drawn mostly from the Meda community. There are tribes also who are engaged in bamboo and cane works. They are poor and backward. Some of the communities engaged in bamboo and cane works live in segregated areas in towns and villages. The tribes are living in forests. Karnataka grows a variety of bamboos and canes. There is sufficient scope for improvement in the production of articles from bamboo and cane. Proper housing and educational facilities should be provided to those communities.

Paddy husking:

19. Karnataka produces sufficient quantity of paddy. Malnad areas and those areas which are covered by irrigation facilities are producing paddy. Paddy husking employs sufficient number of agricultural labourers as any other rural industry. Paddy husking is also facing the competition from rice mills. It is desirable to restrict the number of rice mills.

Coir industry:

20. This industry provides employment to the poorer sections of the people in coastal areas. If a Board is established, coir industry is likely to prosper.

Village handicraft:

21. Articles produced by artisans are in demand both inside and outside the State. Factory products have dampened the enthusiasum of the village artisans. Articles of fine arts cannot be produced on a mass scale. These artisan classes should be assisted in the form of patronage. Government should explore foreign markets for such articles.

Beedi industry:

22. Beedi industry is one of the flourishing industries in Karnataka. It has a great potentiality for the employment of labour. Workers engaged in beedi rolling are exploited by the proprietors of beedi industry. Minimum wage for the beedi workers should be raised.

Service communities:

23. The washerman, the barber, the village watchman and the domestic servant communities are considered very low in the social scale, and they are economically very poor. They should be encouraged to take to other non-traditional occupations.

Wandering and begging communities:

24. There are a number of small communities who eke out a precarious existence. They have no fixed place of residence. Some of these communities are driven to crime. Government should bestow special attention to give them a settled life.

Public health, rural housing and rural water supply:

25. Backward castes and communities live in insanitary conditions. Ideas of sanitation or public health are almost absent. Rural public should be educated in the necessity to maintain sanitary conditions. Every village should have sufficient number of public wells or reservoirs. Village Panchayats should be directed to maintain good sanitary conditions. Housing conditions in rural areas, particularly of the backward castes and communities, are very unsatisfactory. Financial assistance should be given to the members of the backward classes for constructing cheaper houses. Organising of housing co-operatives should be encouraged.

Dated at Bangalore this the 19th day of November, 1975.

1. *L. G. Havanur*	*Chairman*
2. Y. Ramachandra	Member
3. K. R. Srinivasulu Nayudu	Member
4. K. M. Naganna	Member
5. A. Masana Chetty	Member
6. Dharam Singh	Member
7. P. T. Habib	Member
Puttasomachary	Secretary (In-charge)

CHAPTER XXXI

NOTE BY SHRI K. R. SRINIVASULU NAYUDU ON *VELAMAS*

Representatives of Vokkaliga community claim that Velamas are a section of their community. Similar is the claim made by the representatives of Balija Community. Being myself a member of the Velama caste, I feel I am more competent to speak about Velamas. Velamas are a separate and distinct caste from the Vokkaligas and the Balijas. Velamas have no connection whatsoever either with Vokkaligas or with Balijas. In their customs, way of life and origin, Velamas are distinguishable both from the Vokkaligas and the Balijas. There are no inter-caste marriages between the Velamas and the Vokkaligas or the Balijas.

The Commission took a decision that the castes and communities whose population cannot be ascertained could be categorised separately, and that their backwardness being indefinite, their case was not taken into consideration to decide as to whether those castes and communities were socially and educationally backward or not.

The Mysore Backward Classes Committee (1961) had clubbed the Velamas with the Vokkaligas. Some of the members of the Commission, including the Chairman, suggested at one point of time, to continue the clubbing of Velamas with Vokkaligas, as was done by the 1961 Committee on Backward Classes.

The population of Velamas in Karnataka, though not ascertainable, is around two thuosand. Their economic condition is bad. Educational attainment and representation in services could also be very low. Yet, our community has preferered to remain separate from the Vokkaliga community on the ground that we do not belong to the Vokkaliga community. Indeed, some well-wishers of our community suggested that we should remain as a section of Vokkaligas, but I for one did not approve of getting the benefit by wrongly tagging ourselves on to a community to which we do not really belong. Finally, on my insistence, the Commission separated the Velamas from the Vokkaliga community and put them in the list of castes and communities whose population is not known.

Our original home was the State of Andhra Pradesh, and centuries back we migrated to old Mysore State. Mr. C. Hayavadana Rao says that we are the descendents of the military followers and dependents to Peddarajulu, the founder of the Bobbili family, who received a territorial grant in 1652 from Sher Muhamad Khan, the Moghul Fouzdar of Chicacole. Mr. Orme, writing on the History of Military

Transactions in Indostan has this to say on Velamas: 'they esteem themselves the highest blood of native Indians, next to the Brahmans, equal to the Rajpoots and support their pre-eminence by haughtiest observances, insomuch that the breath of a different religion, and even of the meaner Indians, requires ablution; their women never transfer themselves to a second, but burn with the husband of their virginity'.

Mr. H. G. Prendergast noted that the custom of sending a sword to represent an unavoidably absent bride-groom at a wedding is not uncommon among the Velamas.

Of course, of late, the Velams in Andhra Pradesh have taken to agriculture. I am, therefore, of the opinion that the Velamas are not a section either of Vokkaligas or of Balijas. This opinion of mine finds full support from "Castes and Tribes of Southern India"—Vol. VII—pp 336-342, by Edger Thurston.

K. R. SRINIVASULU NAIDU,

Member, Legislative Assembly,

Member, K.B.C.C.

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LIST OF OTHER BACKWARD CLASSES UNDER ART. 15(4)

(*Vide* Statements 6, 7, 8 and 9 of Volume II)

A. *BACKWARD COMMUNITIES*:

1. **Arasu (Urs)**
2. **Balija**
3. **Darzi**
4. **Devadiga (Moili, Devali, Sappaliga, Sheregar)**
5. **Devanga**
6. **Ganiga**
7. **Idiga**
8. **Meda** (N-ST) (Except the district of Coorg)
9. **Nayinda**
10. **Neygi**
11. **Patvekari (Pattegar)**
12. **Rajput**
13. **Satani**
14. **Viswakarma**
15. **Vokkaliga**

B. *BACKWARD CASTES*:

1. **Agasa**
2. **Gabit or Gapit**
3. **Gangakula**
4. **Gosavi**
5. **Gurav (Tambli, Gurou)**
6. **Halwakkiwakkal**
7. **Hanabar (Anabaru)**
8. **Kumbara**
9. **Kuruba**
10. **Thigala**
11. **Uppara**
12. **Aghori** or **Karkaramunda**
13. **Agnani**
14. **Ambalavasi**
15. **Ambattan**
16. **Anapan**
17. **Andi**
18. **Anduran**
19. **Aryan**
20. **Atari (Athari)**
21. **Bahurupi**
22. **Bakadra**
23. **Ballala (Balaballala)**

Karnataka State Archives,
(Departmental Library)
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(ಇಲಾಖಾ ಗ್ರಂಥಾಲಯ)
ಪ್ರಾಪ್ತಿ ಕ್ರಮಾಂಕ Accession No.....
ದಿನಾಂಕ Date.....

24. **Banna**
25. **Basavi**
26. **Bathal (Battal, Battar)**
27. **Bawtar**
28. **Bhaat, Bhatraju**
29. **Bhatia (Bhattia)**
30. **Bhavin**
31. **Binapatta**
32. **Bingi**
33. **Bogad or Bogodi**
34. **Chakkan**
35. **Chalian**
36. **Chamboti**
37. **Chambukutti**
38. **Chaptegara**
39. **Charodi (Mestha)**
40. **Chitara**
41. **Chunchar**
42. **Digwan, Jeengar**
43. **Dogra**
44. **Ghadi**
45. **Ghadsi**
46. **Giddidki (Pingale)**
47. **Goniga**
48. **Gujar (Guzar)**
49. **Gurkha**
50. **Handevazir**
51. **Handervut**
52. **Honniyar**
53. **Hoovadiga, Hoogar, Mali, Phoolmali, Jeer**
54. **Jat** (Immigrants from Punjab)
55. **Kadu Konkani**
56. **Kalavant (Kalavanthi, Ganika)**
57. **Kanakan (Kanakar)**
58. **Kanate**
59. **Karikudumbi**
60. **Karuva**
61. **Kasai (Khatik)**
62. **Kasar (Kanchori)**
63. **Kasbin**
64. **Kavadi**
65. **Kavutiyan**
66. **Kichagara**
67. **Kolayan**
68. **Kolayiri (Koleri)**
69. **Kolla (Kollala)**
70. **Konga**
71. **Kotari (Kottari)**
72. **Kanisan (Kaniyan)** (N-ST) (Except Kollegal Taluk of Mysore district)

73. **Kotegar** (N-SC) (Except the North Kanara district)
74. **Koyava**
75. **Kudubi**
76. **Kunbi (Kulwadi, Kanbi)**
77. **Kurma**
78. **Kutuma**
79. **Ladar**
80. **Lonari**
81. **Mala** (N-SC) (Except the districts of Gulbarga, Raichur, Bidar, South-Kanara and Kollegal Taluk of Mysore district)
82. **Malayali**
83. **Malava**
84. **Maleya**
85. **Maniyani (Muniyani)**
86. **Mannan**
87. **Marta (Merta)**
88. **Marayan, Marvan**
89. **Moger** (N-SC) (Except South Kanara district and Kollegal Taluk of Mysore district)
90. **Mudhar**
91. **Mukkavan**
92. **Murrari**
93. **Nador**
94. **Nalki**
95. **Osthan**
96. **Otari**
97. **Padit**
98. **Padarti**
99. **Padiar (Padiyar)**
100. **Panassa**
101. **Panaba**
102. **Pandaram (Pandara)**
103. **Pandavakulam**
104. **Panika**
105. **Pannekara-Konkani**
106. **Patra**
107. **Patramela**
108. **Pichati**
109. **Pullavan**
110. **Rainudas**
111. **Rajpuri (Rajpur)**
112. **Raval (Raul, Ravalia)**
113. **Rawat (Raya Rawat)**
114. **Saniyar**
115. **Sanyasi**
116. **Satarkar**
117. **Shanan**
118. **Stanika**
119. **Sudir** or **Sudra**

120. **Sutsali**
121. **Tachayiri**
122. **Tilari** or **Tirali**
123. **Tilvi**
124. **Tuluva (Tulu)**
125. **Velluthedan**
126. **Vettuvan**
127. **Yaklar (Yakkali)**
128. **Yeralu**

C. *BACKWARD TRIBES*:

1. (a) **Bailapatar**
   (b) **Bailpatar**
2. (a) **Bairagi**
   (b) **Bava**
   (c) **Bavaji**
3. (a) **Bajania**
   (b) **Bajenia**
4. **Balasanthoshi**
5. (a) **Banjara** (N-SC)
   (b) **Banjari**
   (c) **Brinjari**
   (d) **Vanjara**
   (e) **Wanjari**
   (f) **Lamani**
   (g) **Lambani**
   (h) **Lambada**
   (i) **Lambaid**
   (j) **Sugali** or **Sukali**
   (k) **Gore** or **Goria** (Except the districts of Bangalore, Bellary, Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)
6. **Bazigar**
7. (a) **Beda**
   (b) **Bedar**
   (c) **Bendar**
   (d) **Berad**
   (e) **Boya**
   (f) **Nayak, Nayaka**
   (g) **Naikamakkalu**
   (h) **Naikwadi**
   (i) **Paleyagar (Palegar)**
   (j) **Ramoshi**
   (k) **Talwar**
   (l) **Valmikki**
   (m) **Valmikimakkalu**

(n) **Vedan**
(o) **Walmiki**

8. **Beria**

9. (a) **Bestar**
(b) **Bunde Besta (Bestar)**

10. (a) **Bhamta** (N-SC)
(b) **Bhompta (Rajput)**
(c) **Gantichore**
(d) **Pardeshi Bhampta**
(e) **Takari**
(f) **Uchilian**

11. (a) **Bharadi**
(b) **Bharagi**

12. (a) **Budbudki**
(b) **Joshi**

13. (a) **Chara**
(b) **Chhara**

14. **Chapparband**

15. **Chitrakathi Joshi**

16. **Dang-Dasar**

17. **Darwesu**

18. **Daveri**

19. **Dholi**

20. **Dombar** (N-SC) (Except South Kanara district and Kollegal Taluk of Mysore district)

21. **Dombidasa**

22. **Durgamurga (Burburcha)**

23. **Garudi (Modikar)**

24. **Ghisadi**

25. (a) **Golla (Gouli)**
(b) **Gopal**
(c) **Yadava**

26. (a) **Gondali**
(b) **Ghondali**
(c) **Gondhali**

27. **Handijogi** (N-SC) (Except the districts of Bangalore, Bellary, Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)

28. (a) **Haranshikari**
(b) **Chigaribetegar**
(c) **Nirshikari**
(d) **Phasechari**
(e) **Vagri**

29. **Helava**

30. (a) **Howgar**
    (b) **Howadiga**
31. **Javeri**
32. **Johari**
33. **Jogi**
34. (a) **Joshi**
    (b) **Sadajoshi**
35. **Kamati**
36. **Kanjir Bhat**
37. (a) **Kanjari**
    (b) **Kanjar**
38. (a) **Kashi Kapdi**
    (b) **Tirumali**
39. **Kelkari**
40. (a) **Killekyatha** (N-SC)
    (b) **Katabu** (Except the districts of Bangalore, Bellary, Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)
41. **Kolhati**
42. (a) **Korwar**
    (b) **Kaikadi**
    (c) **Koracha**
    (d) **Koraga**
    (e) **Korama**
    (f) **Yerkula**
    (N-SC/ST)
43. **Madari**
44. **Masania Yogi**
45. (a) **Nandiwala**
    (b) **Full Mali**
46. **Nat (Natuva)**
47. (a) **Nathpanthi**
    (b) **Dauri-Gosavi**
48. **Pamlor**
49. **Panguaul**
50. **Paradhis**
51. **Pichguntala**
52. **Samsia**
53. **Sarania**
54. **Sarodi**
55. **Shikkaligar**

56. **Sudugadusidha** (N-SC) (Except the districts of Bangalore, Bellary, Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)
57. **Takankar**
58. **Vadi**
59. **Vaidu**
60. **Vasudev**
61. **Vir**
62. (a) **Waddar** (N-SC)
    (b) **Bhovi**
    (c) **Bovi**
    (d) **Girni-Waddar**
    (e) **Od**
    (f) **Odde**
    (g) **Tudug-Waddar**
    (h) **Voddar**
    (i) **Woddar** (Except the districts of Bangalore, Bellary, Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)

Note : The S.S.L.C. Educational level of Dombars and Woddars is above 50 per cent of the State average, but below State average. They are included in the category of *Backward Tribes* on the sole ground that all the Ex-Criminal Tribes and Nomadic Tribes are put in one category.

N-SC : Non-Scheduled Caste

N-ST : Non-Scheduled Tribe

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LIST OF OTHER BACKWARD CLASSES UNDER ART. 16(4)

(*Vide* Statements IV, V, VI and VII of Volume III)

A. *BACKWARD COMMUNITIES*:

1. **Darzi**
2. **Devanga**
3. **Idiga**
4. **Meda** (N-ST) (Except the district of Coorg)
5. **Nayinda**
6. **Neygi**
7. **Pategar**
8. **Viswakarma**
9. **Vokkaliga**

B. *BACKWARD CASTES*:

1. **Agasa**
2. **Aghori** or **Karkaramunda**
3. **Agnani**
4. **Ambalavasi**
5. **Ambattan**
6. **Anapan**
7. **Andi**
8. **Anduran**
9. **Aryan**
10. **Atari (Athari)**
11. **Bahurupi**
12. **Bakadra**
13. **Ballala (Balaballala)**
14. **Basavi**
15. **Bathal (Battal, Battar)**
16. **Bawtar**
17. **Bhaat, Bhatraju**
18. **Bhatia (Bhattia)**
19. **Bhavin**
20. **Binapatta**
21. **Bingi**
22. **Bogad** or **Bogodi**
23. **Chakkan**
24. **Chalian**
25. **Chamboti**
26. **Chambukutti**
27. **Chaptegara**
28. **Charodi (Mestha)**
29. **Chitara**

30. **Chunchar**
31. **Digwan, Jeengar**
32. **Dogra**
33. **Gabit** or **Gapit**
34. **Gangakula**
35. **Ghadi**
36. **Ghadsi**
37. **Giddidki (Pingale)**
38. **Goniga (Sadushetty)**
39. **Gosavi**
40. **Gujar (Guzar)**
41. **Gurav (Tambli, Gurov)**
42. **Halwakkiwakkal**
43. **Hanabar (Anabaru)**
44. **Handervut**
45. **Handevazir**
46. **Honniyar**
47. **Hoovadiga (Hoogar)**
48. **Kadu-Konkani**
49. **Kalavant (Kalavanthi, Ganika)**
50. **Kanakan (Kanakar)**
51. **Kanate**
52. **Kanisan (Kaniyan)** (N-ST) (Except Kollegal Taluk of Mysore district)
53. **Karikudumbi**
54. **Karuva**
55. **Kasai (Khatik)**
56. **Kasar (Kanchori, Kanchugara)**
57. **Kasbin**
58. **Kavadi**
59. **Kavutiyan**
60. **Kichagara**
61. **Kolayan**
62. **Kolayiri**
63. **Kolla (Kollala)**
64. **Kotegar** (N-SC) (Except North Kanara district)
65. **Kudubi**
66. **Kumbara**
67. **Kunbi (Kulwadi, Kanbi)**
68. **Kurma**
69. **Kuruba**
70. **Kutuma**
71. **Ladar**
72. **Lonari**
73. **Mala** (N-SC) (Except the districts of Gulbarga, Bidar, Raichur, South Kanara and Kollegal Taluk of Mysore district)
74. **Malava**
75. **Maleya**
76. **Mannan**
77. **Marayan, Marvan**

78. **Marta (Merta)**
79. Moger (N-SC) (Except South Kanara district and Kollegal Taluk of Mysore district)
80. **Mudhar**
81. **Mukkavan**
82. **Murrari**
83. **Nador**
84. **Nalki**
85. **Osthan**
86. **Otari**
87. **Padit**
88. **Panaba**
89. **Panassa**
90. **Pandaram (Pandara)**
91. **Panika**
92. **Panniekara-Konkani**
93. **Patra**
94. **Patramela**
95. **Pichati**
96. **Pullavan**
97. **Rainudas**
98. **Rajapuri (Rajpur)**
99. **Saniyar**
100. **Sanyasi**
101. **Satarkar**
102. **Shanan**
103. **Stanika**
104. **Sudir** or **Sudra**
105. **Sutsali**
106. **Tachayiri**
107. **Thigala**
108. **Tilari** or **Tirali**
109. **Tilvi**
110. **Tuluva (Tulu)**
111. **Uppara**
112. **Velluthedan**
113. **Vettuvan**
114. **Yeklar (Yekkali)**
115. **Yeralu**

C. *BACKWARD TRIBES*:

1. (a) **Bailapatar**
   (b) **Bailpatar**
2. (a) **Bairagi**
   (b) **Bava**
   (c) **Bavaji**
3. (a) **Bajania**
   (b) **Bajenia**

4. **Balasanthoshi**
5. (a) **Banjara** (N-SC)
   (b) **Banjari**
   (c) **Brinjari**
   (d) **Vanjara**
   (e) **Wanjari**
   (f) **Lamani**
   (g) **Lambani**
   (h) **Lambada**
   (i) **Lambaid**
   (j) **Sugali** or **Sukali**
   (k) **Gore** or **Goriya** (Except the districts of Bangalore, Bellary. Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)
6. **Bazigar**
7. (a) **Beda**
   (b) **Bedar**
   (c) **Bendar**
   (d) **Berad**
   (e) **Boya**
   (f) **Nayak, Nayaka**
   (g) **Naikamakkalu**
   (h) **Naikwadi**
   (i) **Paleyagar (Palegar)**
   (j) **Ramoshi**
   (k) **Talwar**
   (l) **Valmiki**
   (m) **Valmikimakkalu**
   (n) **Vedan**
   (o) **Walmiki**
8. **Beria**
9. (a) **Bestar**
   (b) **Bunde Besta (Bestar)**
10. (a) **Bhamta** (N-SC)
    (b) **Bhompta (Rajput)**
    (c) **Gantichore**
    (d) **Pardeshi Bhampta**
    (e) **Takari**
    (f) **Uchilian**
11. (a) **Bharadi**
    (b) **Bharagi**
12. (a) **Budbudki**
    (b) **Joshi**
13. **Chapparband**
14. (a) **Chara**
    (b) **Chhara**

15. **Chitrakathi Joshi**
16. **Dang-Dasar**
17. **Darwesu**
18. **Daveri**
19. **Dholi**
20. **Dombar** (N-SC) (Except South Kanara district and Kollegal Taluk of Mysore district)
21. **Dombidasa**
22. **Durgamurga (Burburcha)**
23. **Garudi (Modikar)**
24. **Ghisadi**
25. (a) **Golla (Gouli)**
    (b) **Gopal**
    (c) **Yadava**
26. (a) **Gondali**
    (b) **Gondhali**
    (c) **Ghondali**
27. **Handijogi** (N-SC) (Except the district of Bangalore, Bellary, Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)
28. (a) **Haranshikari**
    (b) **Chigaribetegar**
    (c) **Nirshikari**
    (d) **Phasechari**
    (e) **Vagri**
29. **Helava**
30. (a) **Howgar**
    (b) **Howadiga**
31. **Javeri**
32. **Jogi**
33. **Johari**
34. (a) **Joshi**
    (b) **Sadajoshi**
35. **Kamati**
36. (a) **Kanjari**
    (b) **Kanjar**
37. **Kanjir Bhat**
38. (a) **Kashi Kapdi**
    (b) **Tirumali**
39. **Kelkari**
40. (a) **Killekyatha** (N-SC)

(b) **Katabu** (Except the districts of Banaglore, Bellary, Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)

41. **Kolhati**

42. (a) **Korwar**
    (b) **Kaikadi**
    (c) **Koracha**
    (d) **Koraga**
    (e) **Korama**
    (f) **Yerkula**
    (N-SC/ST)

43. **Madari**

44. **Masania Yogi**

45. (a) **Nandiwala**
    (b) **Full-Mali**

46. **Nat (Natuva)**

47. (a) **Nathpanthi**
    (b) **Dauri-Gosavi**

48. **Pamlor**

49. **Panguaul**

50. **Paradhis**

51. **Pichguntala**

52. **Sansia**

53. **Sarania**

54. **Sarodi**

55. **Shikkaligar**

56. **Takankar**

57. **Vadi**

58. **Vaidu**

59. **Vasudev**

60. **Vir**

61. (a) **Waddar** (N-SC)
    (b) **Bhovi**
    (c) **Bovi**
    (d) **Girni-Waddar**
    (e) **Od**
    (f) **Odde**
    (g) **Tudug-Waddar**
    (h) **Voddar**
    (i) **Woddar** (Except the districts of Bangalore, Bellary, Chickmagalur, Chitradurga, Hassan, Kolar, Mandya, Mysore, Shimoga and Tumkur)

N-SC : Non-Scheduled Caste

N-ST : Non-Scheduled Tribe

APPENDICES

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APPENDIX 1

GOVERNMENT OF MYSORE

MYSORE BACKWARD CLASSES COMMISSION

QUESTIONNAIRE

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GOVERNMENT OF MYSORE

Social Welfare Department

G.O. No. SWD 81 SET 1972, dated 8th August 1972

The Government of Mysore by their G.O. No. SWD 81 SET 72, dated 8th August 1972 appointed a High Level Commission called **"The Mysore Backward Classes Commission"** consisting of—

Chairman

1. **Sri L. G. Havanur**

Members

2. **Sri Y. Ramachandra**
3. **Sri K. R. Srinivasulu Nayudu**
4. **Sri K. M. Naganna**
5. **Sri A. Masana Chetty**
6. **Sri Dharamsingh**
7. **Sri P. T. Habib**

"The terms of reference for the Commission shall be as follows :—

(1) To suggest the criteria to be adopted for determining whether any classes of persons in the State other than the Scheduled Castes and the Scheduled Tribes may be treated as socially and educationally backward classes ;

(2) To investigate into the living and working conditions of all such classes of persons with special reference to the difficulties under which they may be labouring and to make recommendation as to the special provisions which are necessary to be made by the Government for their advancement and for the promotion of their social, educational and economic interests generally ;

(3) To make a list of all classes which may be regarded as backward classes in the State ;

(4) To suggest what reservations should be made for such classes in the educational institutions maintained by the State or receiving aid out of the State funds ;

(5) To suggest what other concessions like scholarships, etc., may be given to such classes by way of assistance ;

(6) To determine to what extent such classes are represented in the services under the State and to recommend what reservations of posts in such services may be made for them ;

(7) To generally advise the Government about the steps to be taken to ensure adequate safeguards for the backward classes of citizens in the State.

The Mysore Backward Classes Commission may—

(a) obtain such information as it may consider necessary or relevant for its purpose in such form and in such manner as it may think appropriate from the Central Government, the State Government and such other authorities, organisations or individuals as may in the opinion of the Commission, be of assistance to it ;

(b) hold its sittings or the sittings of such sub committees as may be appointed from amongst its own members at such times and at such places as may be determined by or under the authority of the Chairman ; and

(c) visit or depute a Sub-Committee of it to visit such parts of the territory of the State of Mysore or any part of the territory of India as it may consider necessary or convenient. When the Commission or a Sub-Committee visits any part of the State it may co-opt. not less than two persons residing in the district in which such place is situate as additional members of the Commission or the Sub-Committee, for the duration of such visits, one of such members being a woman, if possible.

The Backward Classes Commission is requested to present its final report to the State Government by 31st December, 1973.

By Order and in the name of the Governor of Mysore,

C. B. D'MELLO,
Secretary to Government,
Social Welfare Department."

PREFACE

The Questionnaire is based on the relevant provisions of the Constitution and various rulings of the High Courts and of the Supreme Court relating to Backward classes of citizens.

The people of India, in giving to themselves the Constitution, took a firm determination to annihilate once for all the age-old evil of social discrimination and the idea of high and low.

The Preamble of the Constitution, Arts. 15, 16, 17, 19 (5), 23, 24, 25, 29 read with 15 (4), 38, 39, 43, 45, 325, Part XVI, and in particular Article 46 evidence the determination of the people to do away with religious, social and economic disparities, exploitation and compartmentalism. The said provisions of the Constitution, and others, suggest that every one of our sections should endeavour to establish an egalitarian society. The State is enjoined with a duty to introduce measures as would bring about a healthy social order in which justice—social, economic and political—shall inform all institutions of the national life, and thereby secure to its citizens equality of status and of opportunity.

Article 17 and 25 provide that the stigma of untouchability should be eradicated and that equality in religious and social spheres should be attained by throwing open of Hindu religious institutions of public character to all classes and sections of the Hindus. These and other provisions of the Constitution are a mirror reflecting the type of society we are. And unless we proceed with an avowed object of fighting our religious, social and economic evils we cannot be a successful democracy.

The Constitution by Article 340 authorised the President of India to appoint a Commission to investigate the conditions of the socially and educationally backward classes of citizens (other than the socially, educationally and politically extremely Depressed Classes of citizens, who later came to be termed as Scheduled Castes and Tribes) within the territory of India and the difficulties under which they laboured and to make recommendations as to the steps that should be taken either by the Union or by any State to remove such difficulties and to improve their conditions, etc. Pursuant to Article 340 the President appointed the Backward Classes Commission in 1953 under the Chairmanship of Sri Kaka Kalelkar, which prepared lists of Backward Classes for all the States and the Union Territories.

The recommendations made by the Commission were not accepted by the Union Government, and so the pre-constitution lists of

Backward Classes prepared by the respective States or the Union Territories were allowed to continue.

In the former Princely State of Mysore all castes and communities excepting the Brahmin caste were treated as Backward Classes. That list was in vogue until the date of re-organisation of the New State of Mysore on 1st November 1956, by which parts of the erstwhile State of Bombay, Hyderabad, Madras and the District of Coorg were integrated with the former Princely State of Mysore. The parent States of those integrated parts had their own lists of Backward Classes and to bring about a uniform list for the entire New State of Mysore, the Government issued a G.O. treating all castes and communities as backward excepting the Brahmin caste, a practice which was in vogue in the former Princely State of Mysore. The said list was challenged in the High Court of Mysore and the same was struck down. Successive Government Orders treating certain castes and communities as Backward were issued more or less on the lines of the old Government Order. Those Government Orders were also struck down by the High Court of Mysore or some of them were withdrawn when their validity was challenged. Later, in 1960, the Mysore Government appointed a Committee called " The Mysore Backward Classes Committee " under the Chairmanship of Dr. R. Nagana Gouda, whose recommendations were accepted by the Government with certain modifications. The lists of Backward Classes prepared on the basis of the recommendations made by the Committee and the extent of reservations were challenged in the Supreme Court and the same were struck down. Finally, the Government of Mysore in July 1963 issued a Government Order by which individuals of poor economic income of all castes and communities whose income did not exceed Rs. 1,200 per annum and who were following any of the occupations like cultivation of land, petty trade, etc., were " classified " as backward for purposes of Articles 15 (4) and 16 (4). It was mentioned in the said Government Order that such a scheme treating an individual of any caste or community as backward was only a temporary measure pending an elaborate investigation and collection of statistical data which necessarily involved considerable time.

When the said scheme was challenged in the High Court of Mysore in 1963, the Hon'ble Judges of the High Court observed, after noticing the injustice that was done to the really backward classes under that scheme, that that scheme was a very imperfect one and that the test of *caste* was a relevant, nay, an important factor.

Again in 1972, the Mysore High Court was constrained to observe, on the basis of large number of cases that came up before it during all thes nine years that the scheme adumbrated in the Government Order of July 1963 treating an individual as backward had given wide scope for its abuse and for manipulations and that the

advantage and benefit under that scheme were taken away by candidates not belonging to the really backward classes and that it had not helped the genuine backward classes.

It is thus evident that right from 1950, the year in which the Constitution came into force, the real backward classes were not the beneficiaries, and so, considering the seriousness of the situation and its urgency, the Government thought fit to appoint this High Level Commission under the Chairmanship of Mr. L. G. Havanur, a lawyer.

NOTE :—It is requested that the replies to this Questionnaire be specific, precise and brief. The replies may please be sent either in Kannada or in English.

Replies should be written legibly or typed on one side of the paper.

If any one desires to write on any aspect of the problem which is not covered by this questionnaire, a separate Note or Memorandum may be sent.

If it is intended to send to the Commission any books, periodicals or journals, such documents may please be sent. They would, however, be returned after the Commission's work is over. It is requested that replies to the Questionnaire should reach the Office of the Commission (Mysore Backward Classes Commission No. 338 & 307, III Floor, Vidhana Soudha Bangalore-1) **before the 10th November, 1972.** Those desirous of giving oral evidence before the Commission may kindly intimate their desire to do so.

A copy of this Questionnaire will be sent to any one asking for it. Copies are available in English and Kannada.

N.B. I.—Please note that in this Questionnaire wherever the expression "Backward Classes" is used, the enquiry is about classes of citizens other than the Depressed Classes, now called the Scheduled Castes and Tribes. It is not necessary that attempts should be made by every one to answer all the questions. In the case of a particular group, caste, tribe or community, its leaders or representatives or its organisations should send detailed informations about their group, caste, tribe or community, together with material and statistical data as accurate as possible. The history, traditional occupation, present day condition and the reasons for its backwardness should be given in brief, but not omitting the essential details.

If the same group, caste, tribe or community has synonymous names either in the same locality or elsewhere, that information should also be given.

N.B. II.—The expression "Classes of Citizens" in the context in which it appears in the Constitution means groups of people belonging alike to Hindu, Muslim, Christian, Jain, Veerashaiva, Buddhist or any other relivious community or denomination with an element of stability and permanence, and who are readily identifiable by some common and exclusive characteristics. "Backwardness" of a class of citizens being attributable to various causes, the questionnaire suggests the commonly known causes for identifying any classes which could be termed backward.

N.B. III.—It is not intended to dub a "class" as backward on the sole basis of its *caste* that is to say on the sole basis of its status or rank in relation to the most advanced "classes".

QUESTIONNAIRE

I. Criteria :

For the purpose of properly determining particular castes or tribes or groups as socially and educationally backward, some relevant criteria are necessary so that Government may adopt measures for removing the difficulties under which they labour, and for providing help or preference.

The Scheduled Castes and Scheduled Tribes have been specified by the President of India under Articles 341 and 342 respectively. In the specification of the said Castes and Tribes in the Schedules under Articles 341 and 342 the President of India adopted the stigma of untouchability as the sole criterion in so far as the former category is concerned, and residence in hills and jungles, or where they live on the plains their leading excluded existence is the criterion in so far as the latter category is concerned. The stigma of untouchability being peculiar only to Hindu religious community, the Schedule of Castes under Article 341 contains only the Hindu groups. The Schedule of Tribes under Article 342 contains Tribes and Tribal communities who may belong to Hindu, Muslim, Christian and other religious communities or denominations.

In the matter of finding out ' Backward Classes ,' other than the Scheduled Castes and Scheduled Tribes, the criteria to be adopted should be carefully determined. These " Other Backward Classes " may belong to any religious community and they are not confined to Hindu community alone. It is possible that the Other Backward Classes may be found among Muslim, Christian, Jain, Buddhist, Veerashaiva (Lingayat) and other religious communities or denominations. The Other Backward Classes follow a variety of occupations. The social and educational backwardness of those classes is due to the *combined effect of a plurality of causes.*

1. Would you, therefore, consider the following criteria as relevant, in the context of our society, for their backwardness. The Commission consider that the following causes are relevant, proper and exhaustive to determine the backwardness of classes. If you consider that any additions or modifications are necessary, you may please suggest them.

(a) Their places of habitation being too poor or barren ;

(b) ownership of land, houses and other property being denied to them or being beyond their means to acquire ;

(c) their profession, trade or occupation being such that they get very poor return for the amount of energy they spend, or on account of the social structure being prejudicial to their getting adequate return for the labour ;

(d) their finding it difficult to establish contacts with advanced classes or communities owing to prejudice in the minds of those who are favourably situated ;

(e) their being subjected to some social stigma or inferiority by which they find it difficult to get access to places of cultural or artistic training or of religious and secular education ;

(f) their being segregated from the fortunate sections of society on account of social taboos against inter-marriage, inter-dining and similar opportunities of association ;

(g) their being prevented by members of higher classes or communities from enjoying certain amenities or status in society due to age-old social customs ;

(h) the percentage of literacy and general education among those classes being of extremely low level ;

(i) there being no persons in their community, or even where there are some, they being very few who have received education sufficient for leadership or they being not recognised or encouraged by other sections of the society ;

(j) the bulk of the caste, tribe or group being unable or too slow to pick up training for business or industries or public services.

(k) Backward Classes could also be determined by a very poor conception of sanitation, by a primitive way of worship or indifferent regard for law and order, or unwillingness to resort to settled life, or by very poor and extremely primitive methods followed in their trade or occupation, or by inability to understand the functions of money, and suicidal addictions to certain vices and social customs.

2. What additional criteria, if any, would you suggest for ascertaining what tribes or groups are backward among the Christians, Muslims, Jains, Buddhists and other non-Hindu denominations in our State ?

II. Population :

3. What is the total population of our State according to the Census of :—

1931	Male :	Female :
1941	Male :	Female :
1951	Male :	Female :
1961	Male :	Female :
1971	Male :	Female :

(ii) What is the population of each caste, group, tribe or section amongst Hindus, Muslims, Christians, Jains, Buddhist, Veerashaivas (Lingayats), including Scheduled Castes and Scheduled Tribes and others in our State in :

1931	Male :	Female :
1941	Male :	Female :
1951	Male :	Female :
1961	Male :	Female :
1971	Male :	Female :

(iii) Which of the castes, tribes or sections of the said communities are engaged as :

(i) artisans ;

(ii) agricultural labourers ;

(iii) industrial workers ;

(iv) other occupational or functional workers ; and

(v) paupers ;

(iv) Do you think that the deletion of the mention of the caste or sub-caste or tribe in the Census of 1951 and onwards has been a handicap for determining the precise conditions of the 'Beakward Classes' ?

(v) What procedure would you recommend for adoption in the future Censuses ?

III. Religious and social disabilities :

4. (a) What are the religious, social and civil disabilities to which any of the castes, tribes, groups or sections other than Scheduled Castes/Tribes in your area of the State are subjected ?

(b) Which castes, tribes, groups or sections, other than SCs and STs, are not allowed free entry into any places of public worship that are open to others professing the same religion or belonging to the same religious denomination ; or

(c) free worshipping or offering prayers or performing any religious service in any places of public worship, or bathing in, or using the water of any sacred tank, well or water-course in the same manner and to the same extent as is permissible to other persons professing the same religion or belonging to the same religious denomination.

5. What are the castes, tribes or groups (other than SCs and STs) against whom disability with regard to :

(a) access to any shops, public restaurants, hotels, or places of public entertainment ; or

(b) the use of any utensils and other articles kept in any public restaurant, hotel or Dharmashala for the use of the general public or of persons professing the same religion or belonging to the same religious denomination; or

(c) the practice of any profession or carrying on of any profession; or

(d) the use of, or access to any river, stream or water course where the use of the same is open to others professing the same religion or belonging to the same religious denomination; or

(e) any bathing ghat, burial or cremation ground, any sanitary conveniences, any road or passage or any other places of public resort which other members of the public or persons professing same religion or belonging to the same religious denomination or section thereof have a right to use or have access; or

(f) the use of, or access to, any place used for a charitable or a public purpose maintained wholly or partly out of the State funds or dedicated to the use of the general public or persons professing the same religion or belonging to the same religious denomination; or

(g) the implementation of a benefit under charitable trusts created for the benefit of the general public or for persons professing the same religion or belonging to the same religious denomination; or

(h) the use of, or access to, any public conveyance which is provided for the benefit of the general public or to persons professing the same religion or belonging to the same religious denomination; or

(i) the construction of, or occupation of, any residential premises in any locality whatsoever; or

(j) the use of any Dharmashala which is open to the general pubilc or persons professing the same religion or belonging to the same religious denomination; or

(k) the observance of any social or religious custom or usage, if any;

are enforced ?

6. How many religious and charitable institutions like the Maths, Dharmashalas and Hostels are there in your village, town or city, and to which religious denomination or caste or group do they belong ? What is the extent of property each one of them owns or possesses ?

7. What are the castes, tribes or groups (other than SCs and STs) to the members of which admission to any Hospital, Dispensary,

Educational Institution or any Hostel is refused, or which are discriminated against for such admission ?

8. Which are the castes, tribes or groups (other than SCs and STs) to whom sale of goods is refused or to whom service at the same time or place and on the same terms and conditions at or on which such goods are sold or services rendered is refused in the ordinary course of the business ?

9. What castes, tribes or groups (other than SCs. and STs.) are victims of molestation, annoyance and obstruction when members of those castes, tribes or groups exercise or attempt to exercise any such right ?

10. Which are the castes, tribes or groups (other than SCs and STs) to whom the members of other sections refuse to permit persons belonging to those castes, tribes or groups to use or to occupy any house or land, or refuse to work for hire, or do business with or refuse to render any customary service or refuse to do any of the said things on the terms on which such things would commonly be done in the ordinary course of business or abstain from such social, professional or business relations ?

11. Which of the religious and social disabilities can be stopped or removed and if so, what according to you should be the measures to stop or to remove those disabilities ?

12. Which are the castes, tribes or groups against whom any other diabilities are enforced, though not to the same extent and degree and though not with the same rigour and intensity as are enforced against the Scheduled Castes/Tribes ?

13. Are there any other religious and social customs or prejudices or taboos prevailing amongst any castes, tribes or groups that contribute to their backwardness ?

14. Has the Union or the State Government taken any measure to eradicate those stigma, disabilities or prejudices ?

15. What remedies do you suggest for the speedy eradication of those stigma, disabilities or prejudices ?

16. In your part of the State, is forced labour exacted, and if so, name the castes, tribes or groups from whom labour is exacted ?

17. Do Christians, Muslims, Jains, Buddhists, and Veerashaivas of our State impose religious and social disabilities within their own community or denominational group ?

18. Which of the castes, tribes or groups in your area of the State experience any difficulty in securing the customary services of Brahmins, barbers, washermen, etc. ?

19. What, in your opinion, would be the remedies to secure the speedy and effective removal of those and other social disabilities from which those castes, tribes or groups are still suffering ?

20. What are the social conditions and the status of each of the castes, tribes and groups (other than SCs and STs) in our State ?

21. What measures do you suggest to eliminate the hierarchy of castes ?

22. Do you think that caste system is responsible for keeping some groups permanently backward ?

23. Do you think that the rigidity of caste system should only be relaxed, or do you think that the caste system should be done away with ?

24. Is it a fact that the caste system has, though not recognised by them, permeated the Christian, Muslim, Jain, Buddhist, Veerashaiva and other communities and denominations also ?

25. If, according to you, caste system should not be abolished, or it cannot be abolished, what suggestions do you make for creating mutual understanding between one caste and another, and for creating healthy social conditions ?

IV. Economic:

26. Please give a broad outline of the general economic condition of each caste, tribe or group in your area of the State ?

27. What are the steps taken by the Union or the State Government to bring about an improvement in the economic condition of those classes in your area of the State ? In this connection please give a description of the schemes initiated by the Union or the State Government in recent years.

28. Is there a tendency for joint families to split into separate units in recent years ? If so, with what economic results ?

29. What short-term and long-term schemes do you suggest for improving the economic conditions of those castes, tribes or groups in your area of the State ?

V. Education:

30. (a) What is the percentage of general literacy in our State ?

(b) What is the percentage of literacy in our State among each caste, tribe or group or denomination including Scheduled Castes, Scheduled Tribes, Denotified and Nomadic Tribes ? Please furnish information in detail as below in respect of each caste, tribe or group :

1931	Male :	Female :
1941	Male :	Female :
1951	Male :	Female :
1961	Male :	Female :
1971	Male :	Female :

(c) What is the number of persons who have passed S.S.L.C. Examination in 1962 and April 1972 among each caste, tribe or group including Scheduled Castes, Scheduled Tribes, Denotified Tribes and Nomadic Tribes ?

(d) What is the number of persons who have passed Pre-University Course Examination in 1962 and April 1972 among each caste, tribe or group, including Scheduled Castes, Scheduled Tribes, Denotified Tribes and Nomadic Tribes ?

(e) What special measures have been adopted in our State for the advancement of the education of all classes and in particular of the weaker sections to bring them up to the level of the advanced sections ?

(f) Though in our State Universal Primary Education is made compulsory by law, is the scheme implemented in its full measure ? If not, what steps have been taken to popularise the same among all castes, tribes and groups in our State ?

(g) Do you feel that the weaker sections are not getting the benefits of the said scheme ?

(h) Do you think it necessary to introduce the scheme of Free Mid-day meal to all the school-going children ?

(i) Do you think that the present system of education prevailing in our State is suitable to the children of the weaker sections ?

(j) If the present system of education is not suitable, what changes in the present system of education, or what other system, would you suggest ?

(k) It is said that basic education develops all the faculties of a child and thus equips it to meet the challenges in life. Has our State Government introduced basic education throughout the State ? What has been the experience gained so far ?

(l) What, in your opinion, are the causes of low percentage of literacy among the weaker sections of your area, besides poverty and apathy for education ?

(m) Are there separate hostels managed by religious or charitable trusts for students belonging to different castes, tribes or

groups, or are they admitting freely students belonging to all castes, tribes or groups ? If there are separate hostels provided for students of particular caste, tribe or group, please give the number of such hostels and the number of students accommodated therein. Are such hostels aided by the Government ? Give details of aid and the boarders.

(n) Do you consider that it is desirable that the State should provide free and compulsory education upto S.S.L.C. Standard or a full basic course to all students without distinction of religion, race or caste ?

(o) The Hindu sacred books, like the Vedas, being in Sanskrit language, do you consider that the study of Sanskrit by the weaker sections would remove religious distinctions ?

(p) On account of the advent of the British, English language had been the medium of instruction at the High School and Collegiate level. Even now it is the medium of instruction for some courses of study and it is the language of the judiciary and the legislative enactments. English being the treasure house of all knowledge, and in the context of the present scientific inventions and technological advancement, do you consider that English should be the medium of instruction at the High School and Collegiate level so that the weaker sections may be benefitted by the acquisition of knowledge in various branches of literature, science and law ?

VI. Traditional occupations, functions, trades and professions :

31. (a) What are the occupations, trades and professions largely followed by each caste, tribe or group in our State ? Please give replies in the following tabular form :

(i) Name of caste, tribe or group ;

(ii) Approximate percentage of persons ;

(iii) Name of the occupation.

(b) Can you name particular occupations, functions, trades or professions to which social stigma or inferiority is attached ?

(c) What are the castes, tribes or groups and the approximate number of persons of each of those sections engaged in the following occupations, functions, trades and professions in our State ?

(i) Cultivation of land ;

(ii) Agricultural labour ;

(iii) Sheep rearing ;

(iv) Cattle rearing ;

(v) Cotton weaving ;

(vi) Wool weaving ;

(vii) Silk weaving ;

(viii) Mat weaving;
(ix) Basket making;
(x) Oil crushing;
(xi) Carpentry;
(xii) Hunting and fowling;
(xiii) Toddy tapping;
(xiv) Fortune telling;
(xv) Tailoring;
(xvi) Smithy;
(xvii) Tanning;
(xviii) Leather works;
(xix) Rope making;
(xx) Pottery;
(xxi) Piggery;
(xxii) Fishery;
(xxiii) Cloth washing;
(xxiv) Barbers' profession;
(xxv) Scavenging;
(xxvi) Butchering; and
(xxvii) other handicrafts or professions.

(d) What are the castes, tribes or groups depending upon:
(a) agriculture;
(b) cottage industries;
(c) commerce and trade;
(d) handicrafts; and
(e) other professions.

VII. Denotified, Nomadic and Semi-nomadic Tribes:

Note.—The expression "Denotified Tribes" means those castes and tribes which were notified as criminal under the Criminal Tribes Act, 1924, but who, on account of the Repealment of the said Act, came to be denotified as Criminal Tribes.

32. (a) Which are the Denotified Tribes in your area of our State? Please specify those castes and tribes, and the population of each such caste or tribe.

(b) In your area of the State what are the wandering communities called the Nomadic and Semi-nomadic tribes? Please give the approximate number of each tribe.

(c) It is generally believed that members belonging to Denotified Criminal Tribes, Nomadic and Semi-nomadic tribes

habitually indulge in the commission of offences of theft, robbery, extortion, etc. Is it a fact ? If so, which of those castes or tribes have generally taken to crime as their career ?

(d) Some of the Denotified Criminal Tribes, Nomadic and Semi-nomadic tribes having been specified by the President in his Orders relating to Scheduled Castes and Scheduled Tribes, issued under Articles 341 and 342, as the case may be, would you consider that the remaining few castes and tribes be treated as socially and educationally backward classes for purposes of Articles 15(4) and 16(4), they being similar in all respects to Scheduled Castes and Scheduled Tribes ?

(e) What are the superstitious beliefs, omens and taboos peculiar to them ?

(f) Would you suggest that Government should undertake measure for their upliftment to help those groups discard their old habits and beliefs thus enabling them to gradually get fully assimilated in the general population ?

VIII. Agriculture, agricultural and industrial labour :

33. (a) In view of the fact that large majority of the agricultural labour is constituted by the weaker sections of the society, do you think that it is necessary that minimum wages should be fixed for them also ?

(b) Unlike the Industrial labour, the agricultural labour is not organised, and so, what method would you suggest for them to get their grievances redressed ?

(c) Does the agricultural labour suffer from any disabilities peculiar to itself ? If so, name them.

(d) It is said that in some areas of our State persons belonging to weaker sections of the society are trafficked and the system of *begar* and other similar forms of forced labour are practiced. Is there any law made by the Union Government preventing practice of such a system ?

(e) It is said that certain sections refuse or abstain from serving for public purposes. Has the Union Government made any law imposing compulsory service for public services on those sections?

(f) On account of extreme poverty in the weaker sections, children belonging to those groups below the age of 14, are forced to work or constrained to work in agricultural farms, factories, mines and other hazardous employments. Has the Union Government made any law preventing such employment ?

(g) It is common knowledge that women belonging to weaker sections are agricultural labourers and workers in Industrial establishments, and are menial servants, unlike women of fortunate

sections. What are the disabilities under which those sections or those women are labouring and what are the types of stigma attached to them ?

(h) Due to the introduction of Land Reforms in our State it is said that the economic condition of the farmers in general is improved to some extent. Is it a fact ? If so, what is the extent of the improvement of their economic condition and what is the approximate number of those people ?

(i) It is also said that due to the expansion of co-operative activities the indebtedness of the farmers to the village money-lenders is reduced. Do you subscribe to this view ? And if so, who are the beneficiaries under the present co-operatives ? Which sections in your area are controlling the co-operatives ?

(j) It is further said that although the large majority of agricultural labour is constituted by the weaker sections of the society and though the co-operatives have increased, the benefit has not reached those castes, tribes or groups. What remedy do you suggest so that the benefit of co-operatives may also reach those classes ?

IX. Political :

34. (a) Are there organisations in our State, by whatever name they are called, which are engaged in bringing about political consciousness amongst the people in general ?

(b) Are there any such organisations which have confined their activities in the creation of political consciousness among the members of a particular caste or community ? If there are any, please name them and their scope of activity and the mode of propaganda ?

(c) Seats have been reserved for members of the Scheduled Castes and Scheduled Tribes in Parliament, State Assembly and Local Bodies like the Corporations, Municipalities and Panchayats. How are the political parties guided in the matter of choosing their candidates for the reserved seats ?

(d) Name the political parties in our State who have entered the election arena from 1952.

(e) In choosing their party candidates for elections to Parliament (Lok Sabha and Rajya Sabha), Legislative Assembly and Legislative Council, Corporations, Taluk Development Boards and Municipalities, do those parties go by the predominance of particular castes or communities in the particular constituencies ? If so, give the number of candidates with their caste or community set up by each political party at the elections to Parliament, State Legislatures, Corporations, Municipalities and Taluk Development Boards held in :

1952
1957
1962
1967
1971/1972

Please also give the number of Councillors to the Corporations, Municipalities, Taluk Development Boards and Panchayats with their caste and community from 1952.

X. Services:

35. (a) What is the total number of employees in all the cadres and grades of services in all the Departments of the Government of our State (I.A.S., I.P.S., Gazetted Class I, Gazetted Class II and Non-gazetted Cadres) ? Please give separate figures for all the cadres and grades in each of the Departments as on 1st November 1962 and 31st March 1972.

(b) Please give caste-wise and community-wise break-up in all the Cadres and grades as on 1st November 1962 and 31st March 1972 relating to all the Departments mentioned above.

(c) What is the number of employees of the above cadres and grades appointed temporarily as Local Candidates without following the rules relating to recruitment ? Please give group—. caste— and community-wise break-up of the said temporary employees in all the Departments as on 1st November 1962 and 31st March 1972.

(d) What is the number of persons employed in Local Bodies like Corporations, Municipalities and Taluk Development Boards as on 1st November 1962 and 31st March 1972 ? Please give the figures with reference to each cadre and grade, with caste-wise and community-wise break-up.

(e) What is the total number of employees in the Life Insurance Corporation of India operating within our State as on 1st November 1962 and 31st March 1972 ? Please give the figures cadre-wise and grade-wise.

Also give the caste-wise and community-wise break-up of the employees in all the above cadres and grades as on 1st November 1962 and 31st March 1972.

(f) What is the number of employees in each of the nationalised banks operating in our State, cadre and grade-wise as on 1st November 1962 and 31st March 1972, with caste-wise and community-wise break-up ?

(g) What is the number of persons belonging to various castes or communities employed in the subordinate judicial Department in our State ? Please give the figures relating to appointments

both in judicial service and in Administrative/Ministerial service—cadre and grade-wise as on 1st November 1962 and 31st March 1972.

(h) What is the number of persons belonging to various castes and communities employed in each of the public undertakings in each of the cadres and grades as on 1st November 1962 and 31st March 1972 ?

(i) What is the number of persons belonging to various castes and communities employed in each of the Universities in our State in each of the cadres and grades as on 1st November 1962 and 31st March 1972 ?

(j) Similarly, what is the number of persons belonging to different castes and communities employed in each of the statutory Boards/Corporations/Committees in each of the cadres and grades as on 1st November 1962 and 31st March 1972 ?

(k) What is the number of persons belonging to different castes and communities employed in each of the educational institutions like Schools, High Schools/Higher Secondary Schools, Colleges and other Institutions aided or recognised by Government in each of the cadres and grades as on 1st November 1962 and 31st March 1972 ?

(l) What is the number of persons belonging to different castes and communities employed in each of the All-India Radio Stations of our State in each of the cadres and grades as on 1st November 1962 and 31st March 1972 ?

XI. Housing, health and sanitation :

36. (a) Which castes, groups, or tribes are having their own colonies or segregated habitation in your area of our State ?

(b) By their segregated habitation are they deprived of the basic civic amenities like water, light and sanitation ? Are the houses or the huts in which those groups, castes or tribes live really fit for human habitation from the point of view of health, sanitation and privacy ?

(c) It is said that in most of the towns and villages the land on which the huts or hovels of those castes, tribes or groups stand do not belong to them, and so they are subjected to various indignities by the land-lords, local bodies and the Government Officers. If so, have the State Government or the local bodies like the Corporations, the Municipalities and the Panchayats taken any steps to confer occupancy rights on those groups or to provide facilities like water, lighting and sanitation ?

(d) It is said that on account of such castes, tribes and groups living in insanitary conditions they are afflicted with diseases. Please name the types of diseases commonly prevalent among those groups.

(e) What are the insanitary habits peculiar to those castes, tribes or groups in regard to bathing, clothing, eating, etc. ?

XII. Manners and Customs:

37. (a) Are there any peculiar forms of marriage amongst certain groups, which are considered as repugnant to moral sense; for instance, marriage by force or elopement, remarriage of widows, payment of price for the bride, etc. ?

(b) What are the castes, tribes or groups in which any unwholesome customs or practices are prevalent ?

(c) What are the special peculiarities amongst certain castes, tribes and groups in the matter of clothing or living which distinguish them from other sections ?

(d) Are there any primative dialects spoken by any castes, tribes or groups ? If so, please name them.

(e) In which of the castes, tribes or groups are polyandry and polygamy prevalent in your area of the State ?

(f) What is the effect of such practices on the social life of those sections ?

XIII. Prohibition:

38. (a) What castes, tribes and groups are addicted to drinking and to what extent ?

(b) To what extent addiction to drinking has affected their health and their economic condition ?

(c) What castes, tribes and groups are addicted to narcotic drugs, e.g., tobacco, ganja, bhang, opium, etc. ?

(d) What percentage of income on an average is spent on those habits by those sections ?

(e) Do you consider that ' prohibition ' should be re-introduced in our State ?

(f) Do you consider that by introduction of prohibition the moral, social and economic standards of those sections would be improved ?

(g) Do you think that the introduction of prohibition would be welcomed or appreciated by those sections ?

XIV. Exploitation:

39. (a) What are the different forms or methods of exploitation to which any castes, tribes or groups are being subjected ?

XV. Culture, arts and crafts :

40. (a) Are there any dances and music peculiar to various castes, tribes or groups ?

(b) Are they still being maintained or are they dying out ?

(c) Have any of the castes, tribes or groups specialised in certain characteristic handicrafts ?

(d) What are the cottage crafts still surviving amongst some castes, tribes or groups ?

APPENDIX 2

GOVERNMENT OF MYSORE

SOCIAL WELFARE DEPARTMENT

G.O. No. SWD 81 SET 72, dated 8th August 1972

Determination of backward classes in the State for purposes of admission to educational institutions, aid, assistance, reservation of posts in the services under the State, etc.

Article 15(4) of the Constitution authorises the State to make special provisions for the advancement of the socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 16(4) of the Constitution authorises the State to make any provision for the reservation of appointments or posts in favour of any backward classes of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Article 46 of the Constitution enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled Tribes.

The Government of Mysore have in accordance with the Constitutional intendment issued from time to time, orders providing for reservation for the persons belonging to the Scheduled Castes and Scheduled Tribes and other backward classes in educational institutions, run or aided by the State and also for reservation of posts under the State.

The High Court of Mysore and the Supreme Court of India in certain cases arising before them have had occasions to consider some of these Government Orders. Some of the observations tend to indicate that the scheme evolved by adopting the said criteria has really not helped the genuine backward classes of citizens of the State, that it has given scope for abuse, manipulations, etc., and that the matter requires periodical review.

In order to effectively implement the Constitutional intendment and make available the benefits of the special provisions that may be made to the really backward classes of citizens so that their social and economic interests are promoted, it is considered necessary that the determination of the backward classes should be done on a scientific basis, adopting relevant and appropriate criteria. This involves collection of statistical data and a detailed enquiry into the matter.

For the aforesaid purpose it is necessary to constitute a High Level Commission to undertake a study of the whole question and make recommendations to the State Government.

Accordingly the Government of Mysore hereby appoint the Mysore Backward Classes Commission consisting of :—

(1) Sri L. G. Havanur	Chairman
(2) Sri Y. Ramachandra	Member
(3) Sri K.R.S. Naidu	Member
(4) Sri K. M. Naganna	Member
(5) Sri A. Masana Chetty	Member
(6) Sri Dharmasingh	Member
(7) Sri P. T. Habib	Member

The terms of reference for the Commission shall be as follows :—

1. To suggest the criteria to be adopted for determining whether any classes of persons in the State other than the Scheduled Castes and the Scheduled Tribes may be treated as socially and educationally backward classes.

2. To investigate into the living and working conditions of all such classes of persons with special reference to the difficulties under which they may be labouring and to make recommendation as to the special provisions which are necessary to be made by the Goverment for their advancement and for the promotion of their social, educational and economic interests generally.

3. To make a list of all classes which may be regarded as backward classes in the State.

4. To suggest what reservation should be made for such classes in the educational institutions maintained by the State or receiving aid out of the State funds.

5. To suggest what other concessions like scholarships, etc., may be given to such classes by way of assistance.

6. To determine to what extent such classes are represented in the services under the State and to recommend what reservations of posts in such services may be made for them.

7. To generally advise the Government about the steps to be taken to ensure adequate safeguards for the backward classes of citizens in the State.

The Mysore Backward Classes Commission may—

(a) obtain such information as it may consider necessary or relevant for its purpose in such form and in such manner as it may think appropriate from the Central Government, the State Government and such other authorities, organisations or individuals as may in the opinion of the Commission, be of assistance to it;

(b) hold its sittings or the sittings of such sub-committees as may be appointed from amongst its own members at such times and at such places as may be determined by or under the authority of the Chairman; and

(c) visit or depute a Sub-Committee of it to visit such parts of the territory of the State of Mysore or any part of the territory of India as it may consider necessary or convenient. When the Commission or a Sub-Committee visits any part of the State it may co-opt not less than two persons residing in the district in which such place is situate as additional members of the Commission or the Sub-Committee, for the duration of such visits, one of such members being a woman, if possible.

The Mysore Backward Classes Commission is requested to present its final report to the State Government by 31st December, 1973.

As regards the allowances, etc., payable to the Chairman and other Members of the Commission and as regards the staff of the Commission, separate orders will issue.

Separate orders will also issue regarding appointment of a Secretary of the Commission.

By Order and in the name of the Governor of Mysore,

C. B. D'MELLO,
Secretary to Government,
Social Welfare Department.

GOVERNMENT OF MYSORE

No. SWD 302 SET 73,

Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, dated 9th October 1973

NOTIFICATION

Whereas by Government Order No. SWD 81 SET 72, dated 8th August 1972, the Mysore Backward Classes Commission has been appointed to inquire into and report on the following matters namely:

(1) Suggesting the criteria to be adopted for determining whether any classes of persons in the State other than the Scheduled Castes and the Scheduled Tribes may be treated as socially and educationally backward classes;

(2) Investigating the living and working conditions of all such classes of persons with special reference to the difficulties under which they may be labouring and making recommendations as to the special provisions which are necessary to be made by the Government for their advancement and for the promotion of their social, educational and economic interests generally;

(3) Making a list of all classes which may be regarded as backward classes in the State;

(4) Suggesting what reservations should be made for such classes in the educational institutions maintained by the State or receiving aid out of the State funds;

(5) Suggesting what other concessions like scholarships, etc. may be given to such classes by way of assistance;

(6) Determining to what extent such classes are represented in the services under the State and to recommend what reservations of posts in such services may be made for them;

(7) Generally advising the Government about the steps to be taken to ensure adequate safeguards for the backward classes of citizens in the State;

Whereas the Government of Mysore is of the opinion that to ensure effective functioning of the said Commission, it is necessary to appoint it as a Commission of inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952);

Now, therefore, in exercise of the powers conferred by Section 3 of the said Act, the Government of Mysore hereby constitutes the

said Mysore Backward Classes Commission consisting of the following Members namely:—

1.	Sri L. G. Havanur	Chairman
2.	Sri Y. Ramachandra	Member
3.	Sri K. R. S. Nayudu	Member
4.	Sri K. M. Naganna	Member
5.	Sri A. Masana Chetty	Member
6.	Sri Dharamsingh	Member
7.	Sri P. T. Habib	Member

to be a Commission of Inquiry under the said Act to inquire into and report on the matters referred in the paragraph above.

Under sub-section (1) of Section 5 of the said Act the Government of Mysore hereby directs that the provisions of sub-sections (2), (3), (4) and (5) of the said section shall apply to the said Commission.

The Commission is requested to present its final report to the State Government by 31st December 1973.

By Order and in the name of the Governor of Mysore,

K. B. SURENDRANATH,
Under Secretary to Government,
Social Welfare and Labour (S.W.) Department.

APPENDIX 4

GOVERNMENT OF KARNATAKA

No. SWD 302 SET 73, Karnataka Government Secretariat,
Vidhana Soudha,
Bangalore, dated 27th November 1973.

NOTIFICATION

Whereas by Notification No. SWD 302 SET 73, dated 9th October 1973, the Government of Mysore directed that the Mysore Backward Classes Commission shall be a Commission under sub-section (1) of section 5 of the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952);

Whereas it has been directed that the Commission may complete its work by 31st December 1973;

Whereas from 1st November 1973 the name of the State is altered as the state of Karnataka and it is necessary to consequentially alter the name of the Commission also;

And whereas the work of the Commission is yet to be completed and extension of its term beyond 31st December 1973 is necessary;

Now, therefore, in exercise of powers conferred by section 3 of the above said Act read with section 21 of the Karnataka General Clauses Act 1899 (III of 1899), the Government of Karnataka hereby direct that

(i) The name of the Commission be and is hereby altered as the Karnataka Backward Classes Commission and

(ii) The term of the Commission be and is hereby extended upto and inclusive of 31st December 1974.*

By Order and in the name of the Governor of Karnataka,

K. B. SURENDRANATH,
Under Secretary to Government,
Social Welfare & Labour Department.

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* By Notification No. SWD 302 SET 73, dated 18th December 1974 the term of the Commission was extended till 31st December 1975.